

**"CHAPTER 394B
DISLOCATED WORKERS**

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Note

State additional benefits for unemployed workers in Maui county (repealed October 28, 2017).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

Law Journals and Reviews

Employee Rights Under Judicial Scrutiny: Prevalent Policy Discourse and the Hawai'i Supreme Court. 14 UH L. Rev. 189 (1992).

" **§394B-1 Findings and purpose.** The legislature finds that there is a need for employment and training assistance for dislocated workers in Hawaii and that there is a need to protect employees from the effects of unexpected and sudden layoffs or terminations resulting from closings, plant closures, partial plant closures, and relocations. [L 1983, c 195, pt of §1; am L 1987, c 377, §1]

" **§394B-2 Definitions.** As used in this chapter:

"Closing" means the permanent shutting down of all operations within a covered establishment due to the sale, transfer, merger, other business takeover or transaction of business interests, bankruptcy, or other close of business transaction that results in or may result in the layoff or termination of employees of a covered establishment by the employer.

"Covered establishment" means any industrial, commercial, or other business entity that employs at any time in the preceding twelve-month period, fifty or more persons.

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

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

"Dislocated worker" means an individual who:

- (1) Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment compensation, and is unlikely to return to the person's previous industry or occupation;
- (2) Has been terminated or who has received a notice of termination of employment, as a result of any permanent closure of a business, partial closings, and relocation as defined in this section; or
- (3) Is a long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the

individual resides, including any older individual who may have substantial barriers to employment by reason of age.

"Divestiture" means the transfer of any covered establishment from one employer to another because of the sale, transfer, merger, bankruptcy, or other business takeover or transaction of business interests that causes the covered establishment's employees to become dislocated workers.

"Employee" means any individual engaged in service to an employer.

"Employer" means any individual or entity that, directly or indirectly, owns, operates, or has a controlling interest in a covered establishment, excluding the State or any political subdivision thereof.

"Partial closing" means the permanent shutting down of a portion of operations within a covered establishment due to the sale, transfer, merger, and other business takeover or transaction of business interests and results in or may result in the termination of a portion of the employees of a covered establishment by the employer.

"Person" means one or more individuals, partnerships, associations, corporations, business trust, legal representatives, or any organized group of persons.

"Relocation" means the removal of all or substantially all of the industrial, commercial, or business operations in a covered establishment to a location outside the State of Hawaii. [L 1983, c 195, pt of §1; am L 1987, c 377, §2; am L 1993, c 6, §17; am L Sp 2007, c 5, §1]

Revision Note

In paragraph (1) of the definition of "dislocated worker", "or" deleted pursuant to §23G-15.

" **[§394B-3] Employment opportunities.** The director shall identify job opportunities that exist within or outside the labor market area for which dislocated workers could be retrained and assisted in securing and whether assistance and training opportunities for such employment exist or could be provided within the labor market area. [L 1983, c 195, pt of §1]

" **[§394B-4] Dislocated workers program.** The director shall establish a program to assist dislocated workers to obtain employment through assistance, training, and related employment services which may include but not be limited to:

- (1) Job search assistance;
- (2) Job development;

- (3) Training in job skills;
- (4) Supportive services including commuting assistance, day care for dependents, and financial, career, and personal counseling;
- (5) Pre-layoff assistance;
- (6) Relocation assistance;
- (7) Mediation services or other programs conducted in cooperation with employers or labor organizations to provide early intervention in the event of major business closures;
- (8) Added costs to employers; and
- (9) Stipends and allowances. [L 1983, c 195, pt of §1]

" **[\$394B-5] Relocation assistance.** The director may provide relocation assistance if:

- (1) The dislocated worker cannot obtain employment within commuting distance; and
- (2) The individual has secured suitable long duration employment or obtained a bona fide job offer in a relocation area within the State. [L 1983, c 195, pt of §1]

" **[\$394B-6] Training costs to employers.** Added costs to employers shall be restricted to increased costs incurred by employers when they assume the responsibility for assisting or training dislocated workers. Such costs may include those incurred for assistance and training supervision, for maintaining assistance or training records, for monitoring progress of training and implementing performance standards, for the additional costs of production time allocated for training on the job, and for similar functions essential to dislocated workers assistance and training. [L 1983, c 195, pt of §1]

" **[\$394B-7] Labor organization consultation.** Any activity under this chapter which provides service to a substantial number of members of a labor organization shall be conducted only after full consultation with the appropriate labor organization. [L 1983, c 195, pt of §1]

" **[\$394B-8] Coordination with federal programs.** The director shall develop plans for the implementation of this program which shall include appropriate provisions for the coordination of program activities with related state and federal programs and which shall document the requirements of section 394B-3 and describe those activities to be carried out. [L 1983, c 195, pt of §1]

" **§394B-9 Notification; penalty.** (a) An employer in a covered establishment shall provide to each employee and the director written notification of a closing, divestiture, partial closing, or relocation at least sixty days prior to its occurrence.

(b) An employer that violates this section shall be liable to each affected employee for an amount equal to back pay and benefits for the period of violation not to exceed sixty days. This liability may be reduced by any:

- (1) Wages the employer pays during the notice period; and
- (2) Voluntary and unconditional payment not required by a legal obligation.

(c) An employer of a covered establishment that is actively seeking a buyer for a sale, transfer, or merger shall not be required to provide the notice required under subsection (a) until the employer has entered into a binding agreement for the sale, transfer, or merger of the covered establishment that results in a divestiture.

(d) An employer who fails to provide notice under this section shall be subject to a civil penalty not to exceed \$500 for each day of the violation and the amount shall be deposited in the employment and training fund under section 383-128; provided that the employer may avoid the penalty if the employer satisfies its liability to each affected employee within three weeks after the closing. In any suit, the court, in its discretion, may award the prevailing party reasonable attorney's fees and costs.

(e) The department shall enforce this section and shall have all the powers and duties conferred and imposed upon it pursuant to section 371-12. [L 1987, c 377, pt of §3; am L 2001, c 211, §1; am L Sp 2007, c 5, §2; am L 2011, c 137, §2]

" **[§394B-10] Dislocated worker allowance.** (a) Whenever a closing, partial closing, or relocation occurs, the employer shall provide each affected employee who applies for and is found eligible for unemployment compensation benefits for a particular week under chapter 383 and based in whole or in part upon employment in the closed, partial closed, or relocated plant a payment, denominated a dislocated worker allowance as a supplement to any unemployment compensation benefit received for that week.

(b) The amount of such weekly payment shall be the difference between the employee's average weekly wages (including any payments for periods of compensated leave) prior to the closing (partial closing or relocation) and the weekly unemployment compensation benefits received.

(c) For any one closing, partial closing, or relocation, an otherwise eligible employee ceases to be eligible for a dislocated worker allowance once he or she has received such an allowance from the covered employer for a total of four weeks.

(d) Receipt of a dislocated employee allowance shall not affect an employee's eligibility for unemployment compensation benefits for any week, or the amount of such benefits.

(e) 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.

(f) Notwithstanding the provisions of this section, any contractual agreement arrived at through a collective bargaining process that results in providing supplemental unemployment compensation benefits for an affected employee shall supersede, with respect to that employee, the requirements of this section. [L 1987, c 377, pt of §3]

" **[§394B-11] Prompt payment of wages and benefits.** An employer in a covered establishment shall pay on the effective date of a closing, partial closing, or relocation to each employee all wages, benefits, and other forms of compensation due and owing to said employee. [L 1987, c 377, pt of §3]

" **§394B-12 Civil penalties.** Except as provided in section 394B-9(b), any employer who fails to conform to the provisions of this chapter shall be liable to each of the employees affected in an amount equal to the value of all their wages, benefits, and other compensation for the three months preceding the closure, partial closure, or relocation of the covered establishment. [L 1987, c 377, pt of §3; am L Sp 2007, c 5, §3]

" **[§394B-13] Employees remedies.** (a) An action by an employee to enforce the provisions of this chapter may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of oneself or themselves, or the employee or employees may designate an agent or representative to maintain the action.

(b) The court in any action brought under this section shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs of action, including costs of fees of any nature, and reasonable attorney's fees, to be paid by the defendant.

(c) The court may also provide injunctive relief in appropriate circumstances. [L 1987, c 377, pt of §3]