

JAN 18 2019

A BILL FOR AN ACT

RELATING TO EMPLOYER AND EMPLOYEE RELATIONSHIP.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the master and
2 servant statutory language is outdated and should be updated to
3 more accurately reflect the relationship between two parties
4 engaged in an employment relationship.

5 The purpose of this Act is to replace the term "master and
6 servant" with "employer and employee" in the Hawaii Revised
7 Statutes.

8 SECTION 2. Section 233-1, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§233-1 Certain relationship deemed as that of employer-
11 employee. Whenever a person, firm, corporation, or the like,
12 shall engage or continue in this State in the business of
13 selling tangible personal property, and shall cause such
14 property to be distributed to, by, or through representatives,
15 distributors, dealers, salespersons, peddlers, canvassers,
16 carriers, truckers, or the like, the department of taxation may
17 adopt, in the manner provided by law, one or more rules or



1 regulations providing that for the purposes of the tax laws
2 administered by the department the group, class, or category of
3 persons or business described therein (to be determined by the
4 department as may be appropriate for the purposes of the
5 particular rule or regulation) shall, irrespective of whether
6 the relationship or class of business otherwise would be deemed
7 that of seller and buyer, or principal and agent, [~~or master and~~
8 ~~servant,~~] be deemed to be that of employer and employee;
9 provided that no rule or regulation adopted under this section
10 shall apply to any group, class, or category of persons or
11 business as to which the department shall determine, or it shall
12 be shown:

- 13 (1) That the potential employee has been and will continue
14 to be free from control or direction over the
15 performance of the business or services undertaken by
16 the potential employee, and also
- 17 (2) That the business or services are performed outside of
18 all the places of business of the potential employer,
19 and also
- 20 (3) That the potential employee is customarily engaged in
21 an independently established trade, occupation, or



1 business of the same nature as that involved in the
2 business or services in which the potential employee
3 is engaged or which the potential employee has
4 undertaken for, with, or at the behest of the
5 potential employer.

6 As used in paragraphs (1), (2), and (3) "potential
7 employee" means the person who by such rule or regulation would
8 be classed as an employee, and "potential employer" means the
9 person, firm, corporation, or the like, who by such rule or
10 regulation would be classed as the employer."

11 SECTION 3. Section 383-6, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "§383-6 ~~[Master and servant]~~ Employer and employee
14 relationship, not required when. Services performed by an
15 individual for wages or under any contract of hire shall be
16 deemed to be employment subject to this chapter irrespective of
17 whether the common law relationship of ~~[master and servant]~~
18 employer and employee exists unless and until it is shown to the
19 satisfaction of the department of labor and industrial relations
20 that:



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

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

10 (3) The individual is customarily engaged in an
11 independently established trade, occupation,
12 profession, or business of the same nature as that
13 involved in the contract of service."

14 SECTION 4. If any provision of this Act, or the
15 application thereof to any person or circumstance, is held
16 invalid, the invalidity does not affect other provisions or
17 applications of the Act that can be given effect without the
18 invalid provision or application, and to this end the provisions
19 of this Act are severable.

20 SECTION 5. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



S.B. NO. 805

1 SECTION 6. This Act shall take effect upon its approval.

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S.B. NO. 805

Report Title:

Master and Servant Relationship; Employer and Employee Relationship; Labor; Employment

Description:

Replaces the term "master and servant" with "employer and employee" throughout the Hawaii Revised Statutes.

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