

JAN 26 2022

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# A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

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

1           SECTION 1. The legislature finds that during the COVID-19  
2 pandemic, many independent contractors were unduly considered  
3 "employees" for purposes of unemployment insurance, including  
4 individuals who operated through an independent company, filed  
5 Internal Revenue Service 1099 or W-9 forms, and even procured  
6 indemnity insurance for their contract work. At the same time,  
7 many self-employed professionals across Hawaii were denied  
8 pandemic unemployment assistance benefits due to misconstrued  
9 employment status evaluations and archaic and offensive  
10 plantation-era terminology embedded in Hawaii's statutes.

11           The legislature further finds that Hawaii needs to  
12 modernize its definitions of employees and acknowledge  
13 professionals who provide services on their own timeline,  
14 providing indemnity to the contract solicitors who are indeed  
15 self-employed.

16           The purpose of this Act is to:



- 1 (1) Clarify terms of employment and remove outdated
- 2 language relating to "master-servant" relationships;
- 3 (2) Expand the parameters for the department of labor and
- 4 industrial relations to determine that services
- 5 performed by an individual for wages or under a
- 6 contract of hire are not employment for purposes of
- 7 the Hawaii employment security law; and
- 8 (3) Replace references to master and servant with the
- 9 common law equivalent of employer and employee.

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

12 "**§233-1 Certain relationship deemed [as] that of employer-**  
13 **employee.** Whenever a person, firm, corporation, or the like,  
14 shall engage or continue in this State in the business of  
15 selling tangible personal property, and shall cause [~~such~~] the  
16 property to be distributed to, by, or through representatives,  
17 distributors, dealers, salespersons, peddlers, canvassers,  
18 carriers, truckers, or the like, the department of taxation may  
19 adopt, in the manner provided by law, one or more rules or  
20 regulations providing that for the purposes of the tax laws  
21 administered by the department, the group, class, or category of



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

11 (1) That the potential employee has been and will continue  
12 to be free from control or direction over the  
13 performance of the business or services undertaken by  
14 the potential employee[~~, and also~~];

15 (2) That the business or services are performed outside of  
16 all the places of business of the potential employer[~~, and also~~]; and

18 (3) That the potential employee is customarily engaged in  
19 an independently established trade, occupation, or  
20 business of the same nature as that involved in the  
21 business or services in which the potential employee



1 is engaged or which the potential employee has  
2 undertaken for, with, or at the behest of the  
3 potential employer.

4 As used in [~~paragraphs (1), (2), and (3)~~ "potential"] this  
5 section:

6 "Potential employee" means the person who by [~~such~~] rule or  
7 regulation under this section would be classed as an employee[~~r~~  
8 and "~~potential~~"].

9 "Potential employer" means the person, firm, corporation,  
10 or the like, who by [~~such~~] rule or regulation under this section  
11 would be classed as [~~the~~] an employer."

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

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



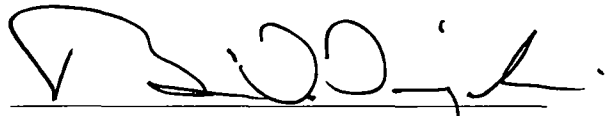

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- 1           (1) The individual has been and will continue to be free
- 2                    from control or direction over the performance of such
- 3                    service[~~,-both~~] under the individual's contract of
- 4                    hire 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[~~-~~]; or
- 14           (4) The individual has liability insurance indemnifying
- 15                    the business for which the service is performed."

16           SECTION 4. Statutory material to be repealed is bracketed  
 17 and stricken. New statutory material is underscored.

18           SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:   
 by request 

# S.B. NO. 3291

**Report Title:**

Employment Security; Master and Servant Relationship; Employer and Employee Relationship; Labor; DLIR; Department of Taxation

**Description:**

Expands the grounds for the department of labor and industrial relations to determine that services performed by an individual for wages or under a contract of hire are not employment for purposes of the Hawaii employment security law. Replaces references to master and servant with the common law equivalent of employer and employee.

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