

A Bill for an Act Relating to Employment Security.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 383-1, Hawaii Revised Statutes, is amended to read:

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

- (1) “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.
- (2) “Benefits” means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.
- (3) “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 his 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(5). Nothing in sections 383-29 and 383-30, except subsection 383-29(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.
- (4) "Department" means the department of labor and industrial relations.
  - (5) "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 regulation prescribe.
  - (6) "Director" means the director of labor and industrial relations of the State.
  - (7) "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.
  - (8) "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.
    - (A) 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.
    - (B) 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.
  - (9) "Employer" means:
    - (A) 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
    - (B) 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.
  - (10) "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.

- (11) "Federal Unemployment Tax Act" means chapter 23 of subtitle C of the Internal Revenue Code of 1954.
- (12) "Fund" means the unemployment compensation fund established by this chapter.
- (13) "Insured work" means employment for employers.
- (14) "Referee" means the referee for unemployment compensation appeals.
- (15) "State" includes, in addition to the states of the United States, the District of Columbia, Puerto Rico, and Virgin Islands.
- (16) "Unemployment." An individual shall be deemed "unemployed" in any week during which he performs no services and with respect to which no wages are payable to him, or in any week of less than full time work if the wages payable to him with respect to such week are less than his weekly benefit amount. The department shall prescribe regulations 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.
- (17) "Week" means any period of seven consecutive days as the department may by regulation prescribe.
- (18) "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.
- (19) "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 he has received remuneration from one or more employers subject to this chapter in form of vacation, holiday, or sickness pay or similar remuneration."

SECTION 2. Section 383-30, Hawaii Revised Statutes, is amended to read:

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

- (1) Voluntary separation. For any week in which he has left his work voluntarily without good cause, and continuing until he 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 subsection, "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.

- (2) Discharge or suspension for misconduct. For the week in which he has been discharged or suspended for misconduct connected with his work, and continuing until he has, subsequent to the week in which the discharge or suspension occurred, been employed for at least five consecutive weeks of employment. For the purposes of this subsection, "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.
- (3) Failure to apply for work, etc. For the week in which he 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 him and continuing until he 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 subsection, "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.
- (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) of this section, the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, the length of his unemployment, his prospects for obtaining work in his customary occupation, the distance of available work from his 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 his work under paragraph (1) of this section.
- (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 his unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment or other premises at which he is or was last employed; provided that this paragraph shall not apply

if it is shown that:

- (A) He is not participating in or directly interested in the labor dispute which caused the stoppage of work; and
  - (B) He 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 subsection, be deemed to be a separate factory, establishment or other premises.
- (5) If the department finds that he has within the twenty-four calendar months immediately preceding any week of his 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, he 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 he has received or is seeking unemployment benefits under any other employment security law, except the agricultural unemployment compensation law, chapter 384, but this paragraph shall not apply (A) if the appropriate agency finally determined that he is not entitled to benefits under such other law, or (B) if benefits are payable to him under an act of Congress which has as its purpose the supplementation of unemployment benefits under a state law.”

SECTION 3. Section 383-61, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read:

“(b) For the purposes of this part, 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.

(c) 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, if another employer, and after the acquisition employs an individual who prior to the acquisition employs an individual who prior to the acquisition was employed by such predecessor, then for the purpose of determining whether such remuneration in excess of the average annual wages has been paid for such employment to the individual, remuneration paid to the individual by such 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."

SECTION 4. Section 383-62, Hawaii Revised Statutes, is amended by amending subsection (b) to read:

"(b) In lieu of contribution 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 the amount of regular benefits plus one-half the amount of extended benefits payable in each calendar quarter 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 him. 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 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 subsection (d) 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 subsection (d), 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."

SECTION 5. Section 383-65, Hawaii Revised Statutes, is amended to read:

**"Sec. 383-65 Charges and noncharges for benefits.** (a) Except as otherwise provided in this section, benefits paid to an individual shall be charged against the accounts of his 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 his base period employers. Benefits paid in benefit years beginning after June 30, 1963 shall be charged to employers' accounts in the calendar year in which the benefits are paid.

(b) Benefits paid to an individual, who, during his base period, earned wages for part-time employment with an employer, shall not be charged to the account of the employer if he continues to give the individual employment to the same extent while he 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.

(c) Benefits paid to an individual for the period he is enrolled in and is in regular attendance at a vocational training or retraining course approved by the director pursuant to section 383-29 shall not be charged to any of his base period employers.

(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 shall mean 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.

(e) Benefits paid to an individual under the provisions of the extended benefits program, sections 383-168 to 383-174, of this chapter, shall not be charged to the account of any of his base period employers on a contributory plan. Provisions of section 383-62(b) and 383-62(c) (2) (A) will apply in the reimbursement of benefits which are paid to an individual who, during his base period, was employed by a governmental employer or a nonprofit organization electing payment in lieu of contributions.

(f) Benefits paid to an individual who qualifies to receive benefits by meeting the minimum earnings and employment requirements only by combining his employment and wages earned in two or more states shall not be charged to the reserve account of any base period employer on a contributory plan within this State.

(g) Any benefit overpaid to a claimant as a result of ineligibility or disqualification under sections 383-29 and 383-30 shall not be charged to the reserve account of a base period employer on a contributory plan unless such overpayment resulted from the employer's failure to furnish information as required by this chapter or the rules and regulations of the department."

SECTION 6. Section 383-62, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

**"Sec. 383-62 Rate of contributions; financing benefits paid to government employees and employees of nonprofit organizations.** (a) Each employer shall pay contributions equal to three per cent of wages paid by him during each calendar year with respect to employment except as otherwise prescribed in this part.

For the calendar year 1977 each employer shall pay contributions equal to three and one-half per cent (3.5%) of wages paid by him during such calendar year.

SECTION 7. Section 383-94, Hawaii Revised Statutes, is amended to read:

**“Sec. 383-94 Records and reports.** 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.

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. Each employer shall report separation of any employee and the wages paid to such employee within five working days after the last day of employment.

If any employer fails to report with respect to a newly hired employee within five working days after the first day of employment, or the separation of an individual or the remuneration which he paid to the individual within five working days after termination of the individual or after mailing of notice from the department by registered or certified mail so to do, he shall pay a penalty in the amount of \$10. The penalty shall be assessed, collected, and paid into the fund in the same manner as contributions. The director may, in a case of excusable failure to file the report within the required time, remit the penalty.”

SECTION 8. Not used.

SECTION 9. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.\*

SECTION 10. This Act shall take effect on July 15, 1976 except that the amendments to sections 383-61 and 383-62(a) shall take effect on January 1, 1977.

(Approved May 27, 1976.)

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\*Edited accordingly.