

ACT 112

H.B. NO. 3169

A Bill for an Act Relating to Employment Security.

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

SECTION 1. Chapter 383, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§383- Worker profiling. The department shall establish and utilize a system of profiling all new claimants for regular compensation in compliance with Section 4 of the Unemployment Compensation Amendments of 1993 (P.L. 103-152) that:

- (1) Identifies which claimants will be likely to exhaust regular compensation and will need job search assistance services to make a successful transition to new employment;
- (2) Refers claimants identified pursuant to paragraph (1) to reemployment services, such as job search assistance services, available under any state or federal law;
- (3) Collects follow-up information relating to the services received by these claimants and the employment outcomes for these claimants subsequent to receiving the services, and utilizes this information in making identifications pursuant to paragraph (1); and
- (4) Meets other requirements that the Secretary of Labor deems appropriate.”

SECTION 2. Section 383-7, Hawaii Revised Statutes, is amended to read as follows:

“§383-7 Excluded service. “Employment” does not include the following service:

- (1) Agricultural labor as defined in section 383-9 if it is performed by an individual who is employed by an employing unit:
 - (A) Which, during each calendar quarter in both the current and the preceding calendar years, paid less than \$20,000 in cash

- remuneration to individuals employed in agricultural labor; and
- (B) Which had, in each of the current and the preceding calendar years:
- (i) No more than nineteen calendar weeks, whether consecutive or not, in which agricultural labor was performed by its employees; or
 - (ii) No more than nine individuals in its employ performing agricultural labor in any one calendar week, whether or not the same individuals performed the labor in each week;
- (2) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority performed in any calendar quarter by an individual if the cash remuneration paid to [such] the individual by an employing unit for [such] the service is less than \$225, and if the total cash remuneration paid to all individuals by an employing unit for [such] the service is less than \$1,000 in each calendar quarter in both the current and preceding calendar years;
- (3) Service not in the course of the employing unit's trade or business performed in any calendar quarter by an individual, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employing unit to perform the service. For the purposes of this paragraph, an individual shall be deemed to be regularly employed to perform service not in the course of an employing unit's trade or business during a calendar quarter only if:
- (A) [on] On each of some twenty-four days during the quarter the individual performs [such] the service for some portion of the day[,]; or
 - (B) [the] The individual was regularly employed (as determined under [clause] subparagraph (A))¹ by the employing unit in the performance of [such] the service during the preceding calendar quarter;
- (4) (A) Service performed on or in connection with a vessel not an American vessel, if the individual performing the service is employed on and in connection with the vessel when outside the United States;
- (B) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed as an ordinary incident thereto, except:
- (i) [the] The service performed in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States)[, and];
 - (ii) [the] The service performed in connection with a vessel of ten net tons or less (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States) by an individual who is employed by an employing unit which had in its employ one or more individuals performing

the service for some portion of a day in each of twenty calendar weeks all occurring, whether consecutive or not, in either the current or the preceding calendar year[.]; and

- (iii) [service] Service performed in connection with the catching or taking of salmon or halibut for commercial purposes;
- (5) Service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of the child's father or mother;
- (6) Service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this chapter, except that to the extent that the Congress of the United States permits states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this chapter shall[be applicable] apply to [such] those instrumentalities, and to services performed for [such] those instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services; provided that if this State is not certified for any year by the Secretary of Labor under section 3304(c) of the federal Internal Revenue Code, the payments required of [such] those instrumentalities with respect to [such] that year shall be refunded by the department of labor and industrial relations from the fund in the same manner and within the same period as is provided in section 383-76 with respect to contributions erroneously collected;
- (7) Service performed in the employ of any other state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more [such] states or political subdivisions; and any service performed in the employ of any instrumentality of one or more other states or their political subdivisions to the extent that the instrumentality is, with respect to [such] the service, exempt from the tax imposed by section 3301 of the Internal Revenue Code of 1954;
- (8) Service with respect to which unemployment compensation is payable under an unemployment system established by an act of Congress;
- (9) (A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) of the federal Internal Revenue Code (other than an organization described in section 401(a) or under section 521 of such Code), if:
 - (i) [the] The remuneration for [such] the service is less than \$50[.]; or
 - (ii) [the] The service is performed by a fully ordained, commissioned, or licensed minister of a church in the exercise of the minister's ministry or by a member of a religious order in the exercise of duties required by [such] the order;
- (B) Service performed in the employ of a school, college, or university, if [such] the service is performed by a student who is

- enrolled and is regularly attending classes at [such] the school, college, or university;
- (10) Service performed in the employ of a foreign government (including service as a consular or other officer or employee of a nondiplomatic representative);
 - (11) Service performed in the employ of an instrumentality wholly owned by a foreign government:
 - (A) If the service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and
 - (B) If the United States Secretary of State has certified or certifies to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;
 - (12) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a [four years] four-year course in a medical school chartered or approved pursuant to state law;
 - (13) Service performed by an individual for an employing unit as an insurance agent or as an insurance solicitor, if all [such] service performed by the individual for the employing unit is performed for remuneration solely by way of commission;
 - (14) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;
 - (15) Service covered by an arrangement between the department and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by the employing unit's duly approved election, are deemed to be performed entirely within the agency's state;
 - (16) Service performed by an individual who, pursuant to the Federal Economic Opportunity Act of 1964, is not subject to the federal laws relating to unemployment compensation;
 - (17) Service performed by an individual for an employing unit as a real estate salesperson, if all [such] service performed by [such] the individual for [such] the employing unit is performed for remuneration solely by way of commission;
 - (18) Service performed by a registered sales representative for a registered travel agency, when [such] the service performed by the individual for the travel agent is performed for remuneration by way of commission;
 - (19) Service performed by a vacuum cleaner salesperson for an employing unit, if all [such] services performed by the individual for [such] the employing unit are performed for remuneration solely by way of commission;

- (20) [Services] Service performed for a [family owned] family-owned private corporation organized for profit that employs only members of the family who each own at least fifty per cent of the shares [each] issued by the corporation, provided that:
- (A) The private corporation elects to be excluded from coverage under this chapter;
 - (B) The election for exclusion shall apply to all shareholders and under the same circumstances;
 - (C) No more than two members of a family may be eligible per entity for exclusion under this [[]paragraph[]];
 - (D) The exclusion shall be irrevocable for five years;
 - (E) The family-owned private corporation [present] presents to the department proof that it has paid federal unemployment insurance taxes as required by federal law; and
 - (F) The election to be excluded from coverage shall be effective the first day of the calendar quarter in which the application and all substantiating documents requested by the department are filed with the department[.].

and

- (21) Service performed by a direct seller as defined in section 3508 of the Internal Revenue Code of 1986.

None of the foregoing exclusions (1) to [(20)] (21) shall apply to any service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act is required to be covered under this chapter.”

SECTION 3. Section 383-29, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

- (1) Claim. The individual has made a claim for benefits with respect to that week in accordance with rules the department may prescribe.
- (2) Registration. The individual has registered for work at, and thereafter continued to report at, an employment office in accordance with rules the department may prescribe, except that the department, by rule, may waive or alter either or both of the requirements of this paragraph as to individuals attached to regular jobs and as to other types of cases or situations with respect to which it finds that compliance with those requirements would be oppressive, or would be inconsistent with the purpose of this chapter; provided that no such rule shall conflict with section 383-21.
- (3) Availability. The individual is able to work and is available for work; provided that no claimant shall be considered ineligible with respect to any week of unemployment for failure to comply with this paragraph if the failure is due to an illness or disability, as evidenced by a physician’s certificate, which occurs during an uninterrupted period of unemployment with respect to which benefits are claimed and no work which would have been suitable prior to the beginning of the illness and disability has been offered the claimant.

- (4) Waiting period. The individual has been unemployed for a waiting period of one week within the individual's benefit year. No week shall be counted as a waiting period:
 - (A) If benefits have been paid with respect thereto;
 - (B) Unless the individual was eligible for benefits with respect thereto as provided in this section and section 383-30, except for the requirements of this paragraph.
- (5) Wages for insured work; weeks of employment.
 - (A) In the case of an individual whose benefit year begins on or after January 2, 1966, but prior to October 1, 1989, the individual has had during the individual's base period a total of fourteen or more weeks of employment as defined in section 383-1 and has been paid wages for insured work during the individual's base period in an amount equal to at least thirty times the individual's weekly benefit amount as determined under section 383-22(b). For the purposes of this subparagraph, wages for insured work shall include wages paid for services:
 - (i) Which were not employment, as defined in section 383-2 or pursuant to an election under section 383-77 prior to January 1, 1978, at any time during the one-year period ending December 31, 1975; and
 - (ii) Which are agricultural labor as defined in section 383-9 except service excluded under section 383-7(1), or are domestic service except service excluded under section 383-7(2); except to the extent that assistance under title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of those services.
 - (B) In the case of an individual whose benefit year begins on and after October 1, 1989 to January 4, 1992, the individual has been employed as defined in section 383-2 and has been paid wages for insured work during the individual's base period in an amount equal to not less than thirty times the individual's weekly benefit amount, as determined under section 383-22(b), and the individual has been paid wages for insured work during at least two quarters of the individual's base period; provided that no otherwise eligible individual who established a prior benefit year under this chapter or the unemployment compensation law of any other state, shall be eligible to receive benefits in a succeeding benefit year until, during the period following the beginning of the prior benefit year, that individual worked in covered employment for which wages were paid in an amount equal to at least five times the weekly benefit amount established for that individual in the succeeding benefit year.
 - (C) In the case of an individual whose benefit year begins after January 4, 1992, the individual has been employed as defined in section 383-2 and has been paid wages for such insured work during the individual's base period in an amount equal to not less than twenty-six times the individual's weekly benefit amount, as determined under section 383-22(b), and the individual has been paid wages for insured work during at least two quarters of the individual's base period; provided that no

otherwise eligible individual who established a prior benefit year under this chapter or the unemployment compensation law of any other state, shall be eligible to receive benefits in a succeeding benefit year until, during the period following the beginning of the prior benefit year, that individual worked in covered employment for which wages were paid in an amount equal to at least five times the weekly benefit amount established for that individual in the succeeding benefit year.

- (D) For the purposes of this paragraph, wages and weeks of employment shall be counted for benefit purposes with respect to any benefit year only if the benefit year begins subsequent to the dates on which the employing unit by which the wages or other remuneration as provided in the definition of weeks of employment in section 383-1 were paid has satisfied the conditions of section 383-1 with respect to becoming an employer.

- (6) Worker profiling. Effective November 24, 1994, an individual who has been referred to reemployment services pursuant to the profiling system under section 383- participates in those services or in similar services. The individual may not be required to participate in reemployment services if the department determines the individual has completed those services, or there is justifiable cause for the claimant's failure to participate in those services."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.²

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

(Approved June 8, 1994.)

Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.