

ACT 196

H.B. NO. 519

A Bill for an Act Relating to Workers' Compensation.

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

SECTION 1. Section 386-1, Hawaii Revised Statutes, is amended by amending the definition of "employment" to read as follows:

"Employment" means any service performed by an individual for another person under any contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully entered into. It includes service of public officials, whether elected or under any appointment or contract of hire, express or implied.

"Employment" does not include:

- (1) Service for a religious, charitable, educational, or nonprofit organization if performed in a voluntary or unpaid capacity;
- (2) Service for a religious, charitable, educational, or nonprofit organization if performed by a recipient of aid therefrom and the service is incidental to or in return for the aid received;
- (3) Service for a school, college, university, college club, fraternity, or sorority if performed by a student who is enrolled and regularly attending classes and in return for board, lodging, or tuition furnished, in whole or in part;
- (4) Service performed by a duly ordained, commissioned, or licensed minister, priest, or rabbi of a church in the exercise of the minister's, priest's, or rabbi's ministry or by a member of a religious order in the exercise of nonsecular duties required by the order;
- (5) Service performed by an individual for another person solely for personal, family, or household purposes if the cash remuneration received is less than \$225 during the current calendar quarter and during each completed calendar quarter of the preceding twelve-month period;
- (6) Domestic, in-home and community-based services for persons with developmental disabilities and mental retardation under the medicaid home and community-based services program pursuant to Title 42 Code of Federal Regulations sections 440.180 and 441.300, and Title 42 Code of Federal Regulations, Part 434, Subpart A, as amended, and identified as chore, personal assistance and habilitation, residential habilitation, supported employment, respite, and skilled nursing services, as the terms are defined by the department of human services, performed by an individual whose services are contracted by a recipient of social service payments and who voluntarily agrees in writing to be an independent contractor of the recipient of social service payments;

- (7) Service performed without wages for a corporation without employees by a corporate officer in which the officer is at least a twenty-five per cent stockholder;
- (8) Service performed by an individual for a corporation if the individual owns at least fifty per cent of the corporation; provided that no employer shall require an employee to incorporate as a condition of employment; ~~and~~
- (9) Service performed by an individual for another person as a real estate salesperson or as a real estate broker, if all the service performed by the individual for the other person is performed for remuneration solely by way of commission~~[-]~~;
- (10) Service performed by a member of a limited liability company if the member is an individual and has a distributional interest, as defined in section 428-101, of not less than fifty per cent in the company; provided that no employer shall require an employee to form a limited liability company as a condition of employment;
- (11) Service performed by a partner of a partnership, as defined in section 425-101, if the partner is an individual; provided that no employer shall require an employee to become a partner or form a partnership as a condition of employment;
- (12) Service performed by a partner of a limited liability partnership if the partner is an individual and has a transferable interest as described in section 425-127 in the partnership of not less than fifty per cent; provided that no employer shall require an employee to form a limited liability partnership as a condition of employment; and
- (13) Service performed by a sole proprietor.

As used in this ~~paragraph~~ definition, “religious, charitable, educational, or non-profit organization” means a corporation, unincorporated association, community chest, fund, or foundation organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual.”

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

SECTION 3. This Act shall take effect upon approval.

(Approved July 7, 2011.)