
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 services rendered by
2 individuals who provide in home care under the State of Hawaii
3 Medicaid DD-MR Waiver Program, as authorized the Social Security
4 Act, as amended, should be excluded from "employment" under
5 chapters 383, 386, 392, and 393, Hawaii Revised Statutes. The
6 legislature finds that if these individuals are not excluded,
7 then the social service payments must be upwardly adjusted to
8 include the cost of employee benefits for these individuals.

9 The legislature finds that excluding these individuals from
10 "employment" under chapters 383, 386, 392, and 393, Hawaii
11 Revised Statutes, is consistent with existing law and reflects
12 the past practices under the determinations of the law by the
13 director of the department of labor and industrial relations
14 prior to 2005.

15 The purpose of this Act is to clarify the existing
16 exclusions under chapters 386, 392, and 393, Hawaii Revised
17 Statutes, and to provide a new exclusion under chapter 383,
18 Hawaii Revised Statutes.



1 SECTION 2. Section 383-1, Hawaii Revised Statutes, is
2 amended by adding a new definition to be appropriately inserted
3 and to read as follows:

4 "Recipient of social service payments" includes:

5 (1) A person who is an eligible recipient of social
6 services such as attendant care and day care services;

7 and

8 (2) A corporation or private agency that contracts
9 directly with the department of human services to
10 provide attendant care and day care authorized under
11 the Social Security Act, as amended."

12 SECTION 3. Section 386-1, Hawaii Revised Statutes, is
13 amended by adding a new definition to be appropriately inserted
14 and to read as follows:

15 "Recipient of social service payments" includes:

16 (1) A person who is an eligible recipient of social
17 services such as attendant care and day care services;

18 and

19 (2) A corporation or private agency that contracts
20 directly with the department of human services to
21 provide attendant care and day care authorized under
22 the Social Security Act, as amended."



1 SECTION 4. Section 392-3, Hawaii Revised Statutes, is
2 amended by adding a new definition to be appropriately inserted
3 and to read as follows:

4 "Recipient of social service payments" includes:

5 (1) A person who is an eligible recipient of social
6 services such as attendant care and day care services;

7 and

8 (2) A corporation or private agency that contracts
9 directly with the department of human services to
10 provide attendant care and day care authorized under
11 the Social Security Act, as amended."

12 SECTION 5. Section 393-3, Hawaii Revised Statutes, is
13 amended by adding a new definition to be appropriately inserted
14 and to read as follows:

15 "Recipient of social service payments" includes:

16 (1) A person who is an eligible recipient of social
17 services such as attendant care and day care services;

18 and

19 (2) A corporation or private agency that contracts
20 directly with the department of human services to
21 provide attendant care and day care authorized under
22 the Social Security Act, as amended."



1 SECTION 6. Section 383-7, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§383-7 Excluded service.** (a) "Employment" shall not
4 include [~~the following service~~]:

5 (1) Agricultural labor as defined in section 383-9 if it
6 is performed by an individual who is employed by an
7 employing unit:

8 (A) [~~Which,~~] That, during each calendar quarter in
9 both the current and the preceding calendar
10 years, paid less than \$20,000 in cash
11 remuneration to individuals employed in
12 agricultural labor; and

13 (B) [~~Which~~] That had, in each of the current and the
14 preceding calendar years:

15 (i) No more than nineteen calendar weeks,
16 whether consecutive or not, in which
17 agricultural labor was performed by its
18 employees; or

19 (ii) No more than nine individuals in its employ
20 performing agricultural labor in any one
21 calendar week, whether or not the same



1 individuals performed the labor in each
2 week;

3 (2) Domestic service in a private home, local college
4 club, or local chapter of a college fraternity or
5 sorority as set forth in section 3306(c)(2) of the
6 Internal Revenue Code of 1986, as amended;

7 (3) Service not in the course of the employing unit's
8 trade or business performed in any calendar quarter by
9 an individual, unless the cash remuneration paid for
10 the service is \$50 or more and the service is
11 performed by an individual who is regularly employed
12 by the employing unit to perform the service. For the
13 purposes of this paragraph, an individual shall be
14 deemed to be regularly employed to perform service not
15 in the course of an employing unit's trade or business
16 during a calendar quarter [~~only~~] if:

17 (A) On each of some twenty-four days during the
18 quarter the individual performs the service for
19 some portion of the day; or

20 (B) The individual was regularly employed as
21 determined under subparagraph (A) by the



1 employing unit in the performance of the service
2 during the preceding calendar quarter;

3 (4) (A) Service performed on or in connection with a
4 vessel not an American vessel, if the individual
5 performing the service is employed on and in
6 connection with the vessel when outside the
7 United States;

8 (B) Service performed by an individual in (or as an
9 officer or member of the crew of a vessel while
10 it is engaged in) the catching, taking,
11 harvesting, cultivating, or farming of any kind
12 of fish, shellfish, crustacea, sponges, seaweeds,
13 or other aquatic forms of animal and vegetable
14 life, including service performed as an ordinary
15 incident thereto, except:

16 (i) The service performed in connection with a
17 vessel of more than ten net tons (determined
18 in the manner provided for determining the
19 register tonnage of merchant vessels under
20 the laws of the United States);

21 (ii) The service performed in connection with a
22 vessel of ten net tons or less (determined



1 in the manner provided for determining the
2 register tonnage of merchant vessels under
3 the laws of the United States) by an
4 individual who is employed by an employing
5 unit which had in its employ one or more
6 individuals performing the service for some
7 portion of a day in each of twenty calendar
8 weeks all occurring, whether consecutive or
9 not, in either the current or the preceding
10 calendar year; and

11 (iii) Service performed in connection with the
12 catching or taking of salmon or halibut for
13 commercial purposes;

14 (5) Service performed by an individual in the employ of
15 the individual's son, daughter, or spouse, and service
16 performed by a child under the age of twenty-one in
17 the employ of the child's father or mother;

18 (6) Service performed in the employ of the United States
19 government or an instrumentality of the United States
20 exempt under the Constitution of the United States
21 from the contributions imposed by this chapter, except
22 that to the extent that the Congress of the United



1 States permits states to require any instrumentalities
2 of the United States to make payments into an
3 unemployment fund under a state unemployment
4 compensation law, all of the provisions of this
5 chapter shall apply to those instrumentalities, and to
6 services performed for those instrumentalities, in the
7 same manner, to the same extent, and on the same terms
8 as to all other employers, employing units,
9 individuals, and services; provided that if this State
10 is not certified for any year by the Secretary of
11 Labor under section 3304(c) of the federal Internal
12 Revenue Code, the payments required of those
13 instrumentalities with respect to that year shall be
14 refunded by the department of labor and industrial
15 relations from the fund in the same manner and within
16 the same period as is provided in section 383-76 with
17 respect to contributions erroneously collected;

- 18 (7) Service performed in the employ of any other state, or
19 any political subdivision thereof, or any
20 instrumentality of any one or more of the foregoing
21 which is wholly owned by one or more states or
22 political subdivisions; and any service performed in



1 the employ of any instrumentality of one or more other
2 states or their political subdivisions to the extent
3 that the instrumentality is, with respect to the
4 service, exempt from the tax imposed by section 3301
5 of the Internal Revenue Code of 1986, as amended;

6 (8) Service with respect to which unemployment
7 compensation is payable under an unemployment system
8 established by an act of Congress;

9 (9) (A) Service performed in any calendar quarter in the
10 employ of any organization exempt from income tax
11 under section 501(a) of the federal Internal
12 Revenue Code (other than an organization
13 described in section 401(a) or under section 521
14 of the Internal Revenue Code), if:

15 (i) The remuneration for the service is less
16 than \$50; or

17 (ii) The service is performed by a fully
18 ordained, commissioned, or licensed minister
19 of a church in the exercise of the
20 minister's ministry or by a member of a
21 religious order in the exercise of duties
22 required by the order;



- 1 (B) Service performed in the employ of a school,
2 college, or university, if the service is
3 performed by a student who is enrolled and is
4 regularly attending classes at the school,
5 college, or university; or
- 6 (C) Service performed by an individual who is
7 enrolled at a nonprofit or public educational
8 institution which normally maintains a regular
9 faculty and curriculum and normally has a
10 regularly organized body of students in
11 attendance at the place where its educational
12 activities are carried on as a student in a full-
13 time program, taken for credit at [~~such~~] the
14 institution, which combines academic instruction
15 with work experience, if [~~such~~] the service is an
16 integral part of such program, and [~~such~~] the
17 institution has so certified to the employer,
18 except that this subparagraph shall not apply to
19 service performed in a program established for or
20 on behalf of an employer or group of employers;
- 21 (10) Service performed in the employ of a foreign
22 government [~~(+)~~], including service as a consular or



1 other officer or employee of a nondiplomatic
2 representative[+];

3 (11) Service performed in the employ of an instrumentality
4 wholly owned by a foreign government:

5 (A) If the service is of a character similar to that
6 performed in foreign countries by employees of
7 the United States government or of an
8 instrumentality thereof; and

9 (B) If the United States Secretary of State has
10 certified or certifies to the United States
11 Secretary of the Treasury that the foreign
12 government, with respect to whose instrumentality
13 exemption is claimed, grants an equivalent
14 exemption with respect to similar service
15 performed in the foreign country by employees of
16 the United States government and of
17 instrumentalities thereof;

18 (12) Service performed as a student nurse in the employ of
19 a hospital or a nurses' training school by an
20 individual who is enrolled and is regularly attending
21 classes in a nurses' training school chartered or
22 approved pursuant to state law; and service performed



1 as an intern in the employ of a hospital by an
2 individual who has completed a four-year course in a
3 medical school chartered or approved pursuant to state
4 law;

5 (13) Service performed by an individual for an employing
6 unit as an insurance producer, if all service
7 performed by the individual for the employing unit is
8 performed for remuneration solely by way of
9 commission;

10 (14) Service performed by an individual under the age of
11 eighteen in the delivery or distribution of newspapers
12 or shopping news, not including delivery or
13 distribution to any point for subsequent delivery or
14 distribution;

15 (15) Service covered by an arrangement between the
16 department and the agency charged with the
17 administration of any other state or federal
18 unemployment compensation law pursuant to which all
19 services performed by an individual for an employing
20 unit during the period covered by the employing unit's
21 duly approved election, are deemed to be performed
22 entirely within the agency's state;



- 1 (16) Service performed by an individual who, pursuant to
2 the Federal Economic Opportunity Act of 1964, is not
3 subject to the federal laws relating to unemployment
4 compensation;
- 5 (17) Service performed by an individual for an employing
6 unit as a real estate salesperson, if all service
7 performed by the individual for the employing unit is
8 performed for remuneration solely by way of
9 commission;
- 10 (18) Service performed by a registered sales representative
11 for a registered travel agency, when the service
12 performed by the individual for the travel agent is
13 performed for remuneration by way of commission;
- 14 (19) Service performed by a vacuum cleaner salesperson for
15 an employing unit, if all services performed by the
16 individual for the employing unit are performed for
17 remuneration solely by way of commission;
- 18 (20) Service performed for a family-owned private
19 corporation organized for profit that employs only
20 members of the family who each own at least fifty per
21 cent of the shares issued by the corporation; provided
22 that:



- 1 (A) The private corporation elects to be excluded
2 from coverage under this chapter;
- 3 (B) The election for exclusion shall apply to all
4 shareholders and under the same circumstances;
- 5 (C) No more than two members of a family may be
6 eligible per entity for exclusion under this
7 paragraph;
- 8 (D) The exclusion shall be irrevocable for five
9 years;
- 10 (E) The family-owned private corporation presents to
11 the department proof that it has paid federal
12 unemployment insurance taxes as required by
13 federal law; and
- 14 (F) The election to be excluded from coverage shall
15 be effective the first day of the calendar
16 quarter in which the application and all
17 substantiating documents requested by the
18 department are filed with the department;
- 19 (21) Service performed by a direct seller as defined in
20 section 3508 of the Internal Revenue Code of 1986;
21 [and]



- 1 (22) Service performed by an election official or election
2 worker as defined in section 3309(b)(3)(F) of the
3 Internal Revenue Code of 1986, as amended~~[]~~; and
- 4 (23) Domestic service, which includes in-home and
5 community-based services for persons with
6 developmental disabilities and mental retardation
7 under the medicaid home and community-based services
8 program pursuant to 42 Code of Federal Regulations
9 sections 440.180 and 441.300, and 42 Code of Federal
10 Regulations part 434, subpart A, as amended, including
11 chore, personal assistance and habilitation,
12 residential habilitation, supported employment,
13 respite, and skilled nursing services, except for
14 adult day health services, as the terms are defined by
15 the department of human services, performed by an
16 individual under a contract between the individual and
17 a recipient of social service payments, which shall be
18 presumed to be an independent contractor relationship
19 unless the director can demonstrate that the
20 individual is engaged in a common law
21 employer-employee relationship with the recipient of
22 social service payments or the recipient of social



1 service payments elects in writing to employ the
2 individual.

3 (b) None of the [~~foregoing~~] exclusions [~~(1) to (22)~~] in
4 subsection (a) shall apply to any service with respect to which
5 a tax is required to be paid under any federal law imposing a
6 tax against which credit may be taken for contributions required
7 to be paid into a state unemployment fund or which as a
8 condition for full tax credit against the tax imposed by the
9 federal Unemployment Tax Act is required to be covered under
10 this chapter."

11 SECTION 7. Section 386-1, Hawaii Revised Statutes, is
12 amended by amending the definition of "employment" to read as
13 follows:

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

20 "Employment" does not include [~~the following service~~]:



- 1 (1) Service for a religious, charitable, educational, or
2 nonprofit organization if performed in a voluntary or
3 unpaid capacity;
- 4 (2) Service for a religious, charitable, educational, or
5 nonprofit organization if performed by a recipient of
6 aid therefrom and the service is incidental to or in
7 return for the aid received;
- 8 (3) Service for a school, college, university, college
9 club, fraternity, or sorority if performed by a
10 student who is enrolled and regularly attending
11 classes and in return for board, lodging, or tuition
12 furnished, in whole or in part;
- 13 (4) Service performed by a duly ordained, commissioned, or
14 licensed minister, priest, or rabbi of a church in the
15 exercise of the minister's, priest's, or rabbi's
16 ministry or by a member of a religious order in the
17 exercise of nonsecular duties required by the order;
- 18 (5) Service performed by an individual for another person
19 solely for personal, family, or household purposes if
20 the cash remuneration received is less than \$225
21 during the current calendar quarter and during each



1 completed calendar quarter of the preceding twelve-
2 month period;

- 3 (6) Domestic, which includes [~~attendant care, and day care~~
4 ~~services authorized by the department of human~~
5 ~~services under the Social Security Act, as amended,]~~
6 in-home and community-based services for persons with
7 developmental disabilities and mental retardation
8 under the medicaid home and community-based services
9 program pursuant to 42 Code of Federal Regulations
10 sections 440.180 and 441.300, and 42 Code of Federal
11 Regulations part 434, subpart A, as amended, including
12 chore, personal assistance and habilitation,
13 residential habilitation, supported employment,
14 respite, and skilled nursing services, except for
15 adult day health services, as the terms are defined by
16 the department of human services performed by an
17 individual [~~in the employ of~~] whose services are
18 contracted by a recipient of social service
19 payments[+] unless the recipient of social service
20 payments elects in writing to employ the individual;
- 21 (7) Service performed without wages for a corporation
22 without employees by a corporate officer in which the



1 officer is at least a twenty-five per cent
2 stockholder;

3 (8) Service performed by an individual for a corporation
4 if the individual owns at least fifty per cent of the
5 corporation; provided that no employer shall require
6 an employee to incorporate as a condition of
7 employment; and

8 (9) Service performed by an individual for another person
9 as a real estate salesperson or as a real estate
10 broker, if all the service performed by the individual
11 for the other person is performed for remuneration
12 solely by way of commission.

13 As used in this paragraph "religious, charitable, educational,
14 or nonprofit organization" means a corporation, unincorporated
15 association, community chest, fund, or foundation organized and
16 operated exclusively for religious, charitable, or educational
17 purposes, no part of the net earnings of which inure to the
18 benefit of any private shareholder or individual."

19 SECTION 8. Section 392-5, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§392-5 Excluded services.** "Employment" as defined in
22 section 392-3 shall not include [~~the following services~~]:



- 1 (1) Domestic service in a private home, local college
2 club, or local chapter of a college fraternity or
3 sorority, performed in any calendar quarter by an
4 individual if the cash remuneration paid by the
5 employer for such service is less than \$225;
- 6 (2) Service not in the course of the employer's trade or
7 business performed in any calendar quarter by an
8 individual, unless the cash remuneration paid for the
9 service is \$50 or more and the service is performed by
10 an individual who is regularly employed by the
11 employer to perform the service. An individual shall
12 be deemed to be regularly employed to perform service
13 not in the course of the employer's trade or business
14 during a calendar quarter only if:
- 15 (A) On each of some twenty-four days during the
16 quarter the individual performs the service for
17 some portion of the day; or
- 18 (B) The individual was regularly employed, [+] as
19 determined under subparagraph (A) [+] , by the
20 employer in the performance of the service during
21 the preceding calendar quarter;



1 (3) Service performed on or in connection with a vessel
2 not an American vessel, if the individual performing
3 the service is employed on and in connection with the
4 vessel when outside the United States;

5 (4) Service performed by an individual in (or as an
6 officer or member of the crew of a vessel while it is
7 engaged in) the catching, taking, harvesting,
8 cultivating, or farming of any kind of fish,
9 shellfish, crustacea, sponges, seaweeds, or other
10 aquatic forms of animal and vegetable life, including
11 service performed as an ordinary incident thereto,
12 except:

13 (A) The service performed in connection with a vessel
14 of more than ten net tons (determined in the
15 manner provided for determining the register
16 tonnage of merchant vessels under the laws of the
17 United States);

18 (B) The service performed in connection with a vessel
19 of ten net tons or less (determined in the manner
20 provided for determining the register tonnage of
21 merchant vessels under the laws of the United
22 States) by an individual who is employed by an



1 employer who, for some portion in each of twenty
2 different calendar weeks in either the current or
3 preceding calendar year, had in the employer's
4 employ one or more persons performing the
5 service, whether or not the weeks were
6 consecutive and whether or not the same
7 individuals performed the service in each week;
8 and

9 (C) The service performed in connection with the
10 catching or taking of salmon or halibut for
11 commercial purposes;

12 (5) Service performed by an individual in the employ of
13 the individual's son, daughter, or spouse, and service
14 performed by a child under the age of twenty-one in
15 the employ of the child's father or mother;

16 (6) Service performed in the employ of the United States
17 government or an instrumentality of the United States
18 exempt under the Constitution of the United States
19 from the contributions imposed by this chapter;

20 (7) Service performed in the employ of any other state, or
21 any political subdivision thereof, or any
22 instrumentality of any one or more of the foregoing



1 ~~[which]~~ that is wholly owned by one or more such
2 states or political subdivisions; and any service
3 performed in the employ of any instrumentality of one
4 or more other states or their political subdivisions
5 to the extent that the instrumentality is, with
6 respect to such service, exempt from the tax imposed
7 by section 3301 of the Internal Revenue Code of 1986;

8 (8) Service with respect to which temporary disability
9 compensation is payable for sickness under a temporary
10 disability insurance system established by an act of
11 Congress;

12 (9) Service performed in any calendar quarter in the
13 employ of any nonprofit organization exempt from
14 income tax under section 501 of the Internal Revenue
15 Code of 1986, if:

16 (A) The remuneration for such service is less than
17 \$50;

18 (B) The service is performed by a student who is
19 enrolled and is regularly attending classes at a
20 school, college, or university;

21 (C) The service is performed by a duly ordained,
22 commissioned, or licensed minister or licensed



1 minister of a church in the exercise of the
2 minister's ministry or by a member of a religious
3 order in the exercise of nonsecular duties
4 required by the order; or

5 (D) The service is performed for a church by an
6 employee who fails to meet the eligibility
7 requirements of section 392-25;

8 (10) Service performed in the employ of a voluntary
9 employees' beneficiary association providing for the
10 payment of life, sick, accident, or other benefits to
11 the members of the association or their dependents,
12 if:

13 (A) No part of its net earnings inures (other than
14 through such payments) to the benefit of any
15 private shareholder or individual; and

16 (B) Eighty-five per cent or more of its income
17 consists of amounts collected from members and
18 amounts contributed by the employer of the
19 members for the sole purpose of making such
20 payments and meeting expenses;

21 (11) Service performed in the employ of a voluntary
22 employees' beneficiary association providing for the



1 payment of life, sick, accident, or other benefits to
2 the members of the association or their dependents or
3 their designated beneficiaries, if:

4 (A) Admission to membership in the association is
5 limited to individuals who are officers or
6 employees of the United States government; and

7 (B) No part of the net earnings of the association
8 inures (other than through such payments) to the
9 benefit of any private shareholder or individual;

10 (12) Service performed in the employ of a school, college,
11 or university, not exempt from income tax under
12 section 501 of the Internal Revenue Code of 1986, if
13 the service is performed by a student who is enrolled
14 and is regularly attending classes at the school,
15 college, or university;

16 (13) Service performed in the employ of any instrumentality
17 wholly owned by a foreign government, if:

18 (A) The service is of a character similar to that
19 performed in foreign countries by employees of
20 the United States government or of an
21 instrumentality thereof; and



1 (B) The United States Secretary of State has
2 certified or certifies to the United States
3 Secretary of the Treasury that the foreign
4 government, with respect to whose instrumentality
5 exemption is claimed, grants an equivalent
6 exemption with respect to similar service
7 performed in the foreign country by employees of
8 the United States government and of
9 instrumentalities thereof;

10 (14) Service performed as a student nurse in the employ of
11 a hospital or a nurses' training school by an
12 individual who is enrolled and is regularly attending
13 classes in a nurses' training school chartered or
14 approved pursuant to state law; and service performed
15 as an intern in the employ of a hospital by an
16 individual who has completed a four years' course in a
17 medical school chartered or approved pursuant to state
18 law;

19 (15) Service performed by an individual for an employer as
20 an insurance producer, if all such service performed
21 by the individual for the employer is performed for
22 remuneration solely by way of commission;



- 1 (16) Service performed by an individual under the age of
2 eighteen in the delivery or distribution of newspapers
3 or shopping news, not including delivery or
4 distribution to any point for subsequent delivery or
5 distribution;
- 6 (17) Service covered by an arrangement between the
7 department and the agency charged with the
8 administration of any other state or federal
9 unemployment compensation law pursuant to which all
10 services performed by an individual for an employer
11 during the period covered by the employer's duly
12 approved election, are deemed to be performed entirely
13 within the agency's state;
- 14 (18) Service performed by an individual who, pursuant to
15 the Federal Economic Opportunity Act of 1964, is not
16 subject to the federal laws relating to unemployment
17 compensation;
- 18 (19) Domestic, which includes [~~attendant care, and day care~~
19 ~~services authorized by the department of human~~
20 ~~services under the Social Security Act, as amended,]~~
21 in-home and community-based services for persons with
22 developmental disabilities and mental retardation



1 under the medicaid home and community-based services
2 program pursuant to 42 Code of Federal Regulations
3 sections 440.180 and 441.300, and 42 Code of Federal
4 Regulations part 434, subpart A, as amended, including
5 chore, personal assistance and habilitation,
6 residential habilitation, supported employment,
7 respite, and skilled nursing services, except for
8 adult day health services, as the terms are defined by
9 the department of human services, performed by an
10 individual [~~in the employ of~~] whose services are
11 contracted by a recipient of social service
12 payments[+] unless the recipient of social service
13 payments elects in writing to employ the individual;

14 (20) Service performed by a vacuum cleaner salesperson for
15 an employing unit, if all such services performed by
16 the individual for such employing unit are performed
17 for remuneration solely by way of commission; or

18 (21) Service performed by an individual for an employer as
19 a real estate salesperson or as a real estate broker,
20 if all the service performed by the individual for the
21 employer is performed for remuneration solely by way
22 of commission."



1 SECTION 9. Section 393-3, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§393-3 Definitions generally.** As used in this chapter[
4 ~~unless the context clearly requires otherwise~~]:

5 [(1)] "Department" means the department of labor and
6 industrial relations.

7 [(2)] "Director" means the director of labor and
8 industrial relations.

9 [(3)] "Employer" means any individual or type of
10 organization, including any partnership, association, trust,
11 estate, joint stock company, insurance company, or corporation,
12 whether domestic or foreign, a debtor in possession or receiver
13 or trustee in bankruptcy, or the legal representative of a
14 deceased person, who has one or more regular employees in the
15 employer's employment. "Employer" does not include:

16 [(A)] (1) The State, any of its political
17 subdivisions, or any instrumentality of the State or
18 its political subdivisions;

19 [(B)] (2) The United States government or any
20 instrumentality of the United States;



1 ~~[(C)]~~ (3) Any other state or political subdivision
2 thereof or instrumentality of such state or political
3 subdivision;

4 ~~[(D)]~~ (4) Any foreign government or instrumentality
5 wholly owned by a foreign government, if ~~[(i) the]~~:

6 (A) The service performed in its employ is of a
7 character similar to that performed in foreign
8 countries by employees of the United States
9 government or of an instrumentality thereof~~[-]~~
10 and ~~[(ii) the]~~

11 (B) The United States Secretary of State has
12 certified or certifies to the United States
13 Secretary of the Treasury that the foreign
14 government, with respect to whose instrumentality
15 exemption is claimed, grants an equivalent
16 exemption with respect to similar service
17 performed in the foreign country by employees of
18 the United States government and of
19 instrumentalities thereof.

20 ~~[(4)]~~ "Employment" means service, including service in
21 interstate commerce, performed for wages under any contract of



1 hire, written or oral, expressed or implied, with an employer,
2 except as otherwise provided in sections 393-4 and 393-5.

3 ~~[(5)]~~ "Premium" means the amount payable to a prepaid
4 health care plan contractor as consideration for the
5 contractor's obligations under a prepaid health care plan.

6 ~~[(6)]~~ "Prepaid health care plan" means any agreement by
7 which any prepaid health care plan contractor undertakes in
8 consideration of a stipulated premium:

9 ~~[(A)]~~ (1) Either to furnish health care, including
10 hospitalization, surgery, medical or nursing care,
11 drugs or other restorative appliances, subject to, if
12 at all, only a nominal per service charge; or

13 ~~[(B)]~~ (2) To defray or reimburse, in whole or in
14 part, the expenses of health care.

15 ~~[(7)]~~ "Prepaid health care plan contractor" means:

16 ~~[(A)]~~ (1) Any medical group or organization which
17 undertakes under a prepaid health care plan to provide
18 health care; ~~[(e)]~~

19 ~~[(B)]~~ (2) Any nonprofit organization which undertakes
20 under a prepaid health care plan to defray or
21 reimburse in whole or in part the expenses of health
22 care; or



1 ~~[(C)]~~ (3) Any insurer who undertakes under a prepaid
2 health care plan to defray or reimburse in whole or in
3 part the expenses of health care.

4 "Recipient of social service payments" includes:

5 (1) A person who is an eligible recipient of social
6 services such as attendant care and day care services;

7 and

8 (2) A corporation or private agency that contracts
9 directly with the department of human services to
10 provide attendant care and day care authorized under
11 the Social Security Act, as amended.

12 ~~[(8)]~~ "Regular employee" means a person employed in the
13 employment of any one employer for at least twenty hours per
14 week but does not include a person employed in seasonal
15 employment. "Seasonal employment" for the purposes of this
16 paragraph means employment in a seasonal pursuit as defined in
17 section 387-1 by a seasonal employer during a seasonal period or
18 seasonal periods for the employer in the seasonal pursuit or
19 employment by an employer engaged in the cultivating,
20 harvesting, processing, canning, and warehousing of pineapple
21 during its seasonal periods. The director by rule and



1 regulation may determine the kind of employment that constitutes
2 seasonal employment.

3 [~~9~~] "Wages" means all remuneration for services from
4 whatever source, including commissions, bonuses, and tips and
5 gratuities paid directly to any individual by a customer of the
6 individual's employer, and the cash value of all remuneration in
7 any medium other than cash.

8 The director may issue regulations for the reasonable
9 determination of the cash value of remuneration in any medium
10 other than cash.

11 If the employee does not account to the employee's employer
12 for the tips and gratuities received and is engaged in an
13 occupation in which the employee customarily and regularly
14 receives more than \$20 a month in tips, the combined amount
15 received by the employee from the employee's employer and from
16 tips shall be deemed to be at least equal to the wage required
17 by chapter 387 or a greater sum as determined by regulation of
18 the director.

19 "Wages" does not include the amount of any payment
20 specified in section 383-11 or 392-22 or chapter 386."

21 SECTION 10. Section 393-5, Hawaii Revised Statutes, is
22 amended to read as follows:



1 **"§393-5 Excluded services.** "Employment" as defined in
2 section 393-3 does not include [~~the following services~~]:

3 (1) Service performed by an individual in the employ of an
4 employer who, by the laws of the United States, is
5 responsible for care and cost in connection with such
6 service[~~-~~];

7 (2) Service performed by an individual in the employ of
8 the individual's spouse, son, or daughter, and service
9 performed by an individual under the age of twenty-one
10 in the employ of the individual's father or mother[~~-~~];

11 (3) Service performed in the employ of a voluntary
12 employee's beneficiary association providing for the
13 payment of life, sick, accident, or other benefits to
14 the members of the association or their dependents or
15 their designated beneficiaries, if:

16 (A) Admission to membership in the association is
17 limited to individuals who are officers or
18 employees of the United States government[~~-~~] and

19 (B) No part of the net earnings of the association
20 inures (other than through such payments) to the
21 benefits of any private shareholder or
22 individual[~~-~~];



- 1 (4) Service performed by an individual for an employer as
2 an insurance agent or as an insurance solicitor[-] if
3 all [~~such~~] service performed by the individual for the
4 employer is performed for remuneration [~~solely~~] by way
5 of commission[-];
- 6 (5) Service performed by an individual for an employer as
7 a real estate salesperson or as a real estate
8 broker[-] if all [~~such~~] service performed by the
9 individual for the employer is performed for
10 remuneration [~~solely~~] by way of commission[-];
- 11 (6) Service performed by an individual who, pursuant to
12 the Federal Economic Opportunity Act of 1964, is not
13 subject to the provisions of law relating to federal
14 employment, including unemployment compensation[-];
15 and
- 16 (7) Domestic, which includes [~~attendant care, and day care~~
17 ~~services authorized by the department of human~~
18 ~~services under the Social Security Act, as amended,~~]
19 in-home and community-based services for persons with
20 developmental disabilities and mental retardation
21 under the medicaid home and community-based services
22 program pursuant to 42 Code of Federal Regulations



1 sections 440.180 and 441.300, and 42 Code of Federal
2 Regulations part 434, subpart A, as amended, including
3 chore, personal assistance and habilitation,
4 residential habilitation, supported employment,
5 respite, and skilled nursing services, except for
6 adult day health services, as the terms are defined by
7 the department of human services, performed by an
8 individual [~~in the employ of~~] whose services are
9 contracted by a recipient of social service
10 payments[-] unless the recipient of social service
11 payments elects in writing to employ the individual."

12 SECTION 11. If any provision of this Act, or the
13 application thereof to any person or circumstance is contrary to
14 federal law, that provision or any application thereof to any
15 person or circumstance shall be invalid; provided that the
16 invalidity does not affect other provisions or applications of
17 the Act, which can be given effect without the invalid provision
18 or application, and to this end the provisions of this Act are
19 severable.

20 SECTION 12. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

22 SECTION 13. This Act shall take effect upon approval.



Report Title:

Employment; Exemptions

Description:

Exempts recipients of social service payments from the scope of employment related laws; defines "recipients of social service payments" as it relates to chapters 383, 386, 392, and 393, Hawaii Revised Statutes. (SD1)

