
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 individuals who
2 provide in home care under the State of Hawaii Medicaid DD-MR
3 Waiver Program, as authorized the Social Security Act, as
4 amended, should be excluded from "employment" under chapters
5 383, 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 purpose of this Act is to clarify the existing
10 exclusions under chapters 386, 392, and 393, and to provide a
11 new exclusion under chapter 383, Hawaii Revised Statutes.

12 SECTION 2. Section 383-1, 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



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

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

8 "Recipient of social service payments" includes:

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

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

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

19 "Recipient of social service payments" includes:

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



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

5 SECTION 5. Section 383-7, Hawaii Revised Statutes, is
 6 amended to read as follows:

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

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

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

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

19 (i) No more than nineteen calendar weeks,
 20 whether consecutive or not, in which
 21 agricultural labor was performed by its
 22 employees; or



1 (ii) No more than nine individuals in its employ
2 performing agricultural labor in any one
3 calendar week, whether or not the same
4 individuals performed the labor in each
5 week;

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

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

20 (A) On each of some twenty-four days during the
21 quarter the individual performs the service for
22 some portion of the day; or



1 (B) The individual was regularly employed as
2 determined under subparagraph (A) by the
3 employing unit in the performance of the service
4 during the preceding calendar quarter;

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

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

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



- 1 (ii) The service performed in connection with a
2 vessel of ten net tons or less (determined
3 in the manner provided for determining the
4 register tonnage of merchant vessels under
5 the laws of the United States) by an
6 individual who is employed by an employing
7 unit which had in its employ one or more
8 individuals performing the service for some
9 portion of a day in each of twenty calendar
10 weeks all occurring, whether consecutive or
11 not, in either the current or the preceding
12 calendar year; and
- 13 (iii) Service performed in connection with the
14 catching or taking of salmon or halibut for
15 commercial purposes;
- 16 (5) Service performed by an individual in the employ of
17 the individual's son, daughter, or spouse, and service
18 performed by a child under the age of twenty-one in
19 the employ of the child's father or mother;
- 20 (6) Service performed in the employ of the United States
21 government or an instrumentality of the United States
22 exempt under the Constitution of the United States



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

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

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

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

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

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



1 religious order in the exercise of duties
2 required by the order;

3 (B) Service performed in the employ of a school,
4 college, or university, if the service is
5 performed by a student who is enrolled and is
6 regularly attending classes at the school,
7 college, or university; or

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



- 1 (10) Service performed in the employ of a foreign
2 government [+], including service as a consular or
3 other officer or employee of a nondiplomatic
4 representative[+];
- 5 (11) Service performed in the employ of an instrumentality
6 wholly owned by a foreign government:
- 7 (A) If the service is of a character similar to that
8 performed in foreign countries by employees of
9 the United States government or of an
10 instrumentality thereof; and
- 11 (B) If 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 (12) Service performed as a student nurse in the employ of
21 a hospital or a nurses' training school by an
22 individual who is enrolled and is regularly attending



1 classes in a nurses' training school chartered or
2 approved pursuant to state law; and service performed
3 as an intern in the employ of a hospital by an
4 individual who has completed a four-year course in a
5 medical school chartered or approved pursuant to state
6 law;

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

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

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



1 duly approved election, are deemed to be performed
2 entirely within the agency's state;

3 (16) Service performed by an individual who, pursuant to
4 the Federal Economic Opportunity Act of 1964, is not
5 subject to the federal laws relating to unemployment
6 compensation;

7 (17) Service performed by an individual for an employing
8 unit as a real estate salesperson, if all service
9 performed by the individual for the employing unit is
10 performed for remuneration solely by way of
11 commission;

12 (18) Service performed by a registered sales representative
13 for a registered travel agency, when the service
14 performed by the individual for the travel agent is
15 performed for remuneration by way of commission;

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

20 (20) Service performed for a family-owned private
21 corporation organized for profit that employs only
22 members of the family who each own at least fifty per

1 cent of the shares issued by the corporation; provided

2 that:

3 (A) The private corporation elects to be excluded
4 from coverage under this chapter;

5 (B) The election for exclusion shall apply to all
6 shareholders and under the same circumstances;

7 (C) No more than two members of a family may be
8 eligible per entity for exclusion under this
9 paragraph;

10 (D) The exclusion shall be irrevocable for five
11 years;

12 (E) The family-owned private corporation presents to
13 the department proof that it has paid federal
14 unemployment insurance taxes as required by
15 federal law; and

16 (F) The election to be excluded from coverage shall
17 be effective the first day of the calendar
18 quarter in which the application and all
19 substantiating documents requested by the
20 department are filed with the department;



- 1 (21) Service performed by a direct seller as defined in
2 section 3508 of the Internal Revenue Code of 1986;
3 [and]
- 4 (22) Service performed by an election official or election
5 worker as defined in section 3309(b)(3)(F) of the
6 Internal Revenue Code of 1986, as amended[-]; and
- 7 (23) Domestic service, which includes residential
8 habilitation, personal habilitation/habilitation,
9 skilled nursing, and respite services but excludes
10 adult day health services, under the State of Hawaii
11 medicaid DD-MR waiver program, as it is defined by the
12 department of human services, performed by an
13 individual:
- 14 (A) In the employ of an eligible recipient of social
15 services; or
- 16 (B) Providing services to an eligible recipient of
17 social services on behalf of a recipient of social
18 service payments; under a contract between the
19 individual and the recipient of social service
20 payments that is presumed to be an independent
21 contractor relationship unless the director can
22 demonstrate that the individual is engaged in common



1 law employer-employee relationship with the recipient
2 of social service payments.

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 6. Section 393-3, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§393-3 Definitions generally.** As used in this chapter,
14 unless the context clearly requires otherwise:

15 [~~(1)~~] "Department" means the department of labor and industrial
16 relations.

17 [~~(2)~~] "Director" means the director of labor and industrial
18 relations.

19 [~~(3)~~] "Employer" means any individual or type of organization,
20 including any partnership, association, trust, estate,
21 joint stock company, insurance company, or corporation,
22 whether domestic or foreign, a debtor in possession or



1 receiver or trustee in bankruptcy, or the legal
2 representative of a deceased person, who has one or more
3 regular employees in the employer's employment.

4 "Employer" does not include:

5 ~~[(A)]~~ (1) The State, any of its political subdivisions, or
6 any instrumentality of the State or its political
7 subdivisions;

8 ~~[(B)]~~ (2) The United States government or any
9 instrumentality of the United States;

10 ~~[(C)]~~ (3) Any other state or political subdivision thereof
11 or instrumentality of such state or political
12 subdivision;

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

15 (A) The service performed in its employ is of a
16 character similar to that performed in foreign countries
17 by employees of the United States government or of an
18 instrumentality thereof~~[(7)]~~ and ~~[(ii) the]~~

19 (B) The United States Secretary of State has certified
20 or certifies to the United States Secretary of the
21 Treasury that the foreign government, with respect to
22 whose instrumentality exemption is claimed, grants an



1 equivalent exemption with respect to similar service
2 performed in the foreign country by employees of the
3 United States government and of instrumentalities
4 thereof.

5 ~~[(4)]~~ "Employment" means service, including service in
6 interstate commerce, performed for wages under any
7 contract of hire, written or oral, expressed or implied,
8 with an employer, except as otherwise provided in
9 sections 393-4 and 393-5.

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

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

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

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



1 [~~7~~] "Prepaid health care plan contractor" means:

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

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

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

11 "Recipient of social service payments" includes:

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

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

19 [~~8~~] "Regular employee" means a person employed in the
20 employment of any one employer for at least twenty hours per
21 week but does not include a person employed in seasonal
22 employment. "Seasonal employment" for the purposes of this



1 paragraph means employment in a seasonal pursuit as defined in
2 section 387-1 by a seasonal employer during a seasonal period or
3 seasonal periods for the employer in the seasonal pursuit or
4 employment by an employer engaged in the cultivating,
5 harvesting, processing, canning, and warehousing of pineapple
6 during its seasonal periods. The director by rule and
7 regulation may determine the kind of employment that constitutes
8 seasonal employment.

9 [+9] "Wages" means all remuneration for services from whatever
10 source, including commissions, bonuses, and tips and gratuities
11 paid directly to any individual by a customer of the
12 individual's employer, and the cash value of all remuneration in
13 any medium other than cash.

14 The director may issue regulations for the reasonable
15 determination of the cash value of remuneration in any medium
16 other than cash.

17 If the employee does not account to the employee's employer
18 for the tips and gratuities received and is engaged in an
19 occupation in which the employee customarily and regularly
20 receives more than \$20 a month in tips, the combined amount
21 received by the employee from the employee's employer and from
22 tips shall be deemed to be at least equal to the wage required



1 by chapter 387 or a greater sum as determined by regulation of
2 the director.

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

5 SECTION 7. If any provision of this Act, or the
6 application thereof to any person or circumstance is contrary to
7 federal law, that provision or any application thereof to any
8 person or circumstance shall be invalid; provided that the
9 invalidity does not affect other provisions or applications of
10 the Act, which can be given effect without the invalid provision
11 or application, and to this end the provisions of this Act are
12 severable.

13 SECTION 8. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 9. This Act shall take effect on July 1, 2059.



REPORT Title:

Employment; Exemption

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. (SD2)

