

JAN 28 2009

A BILL FOR AN ACT

RELATING TO EMPLOYMENT SECURITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the recent collapse
2 of national credit, housing, financial, and other markets has
3 had severe consequences on the local economy, resulting in
4 significant losses to employment. The Honolulu Star-Bulletin
5 reports that in December of 2008, the state unemployment rate
6 rose to 5.5 per cent - the highest in almost ten years. By
7 January of 2009, the department of labor and industrial
8 relations was receiving approximately three thousand new
9 unemployment claims per week, which is more than double the
10 number of new claims filed during the same period in 2008.

11 The legislature finds that the current employment situation
12 in Hawaii compels immediate action by the State, working in
13 partnership with businesses, to provide an alternative to the
14 complete layoff of workers, that would mutually benefit
15 employers and employees. The State currently implements a
16 partial unemployment program through rules implemented by the
17 department of industrial relations. Partial unemployment allows



1 employers to retain their full-time workers by reducing workers'
2 hours, while allowing the employees to collect unemployment
3 benefits and maintain certain benefits for up to four weeks of
4 partial unemployment.

5 The purpose of this Act is:

- 6 (1) To clarify and temporarily codify implementation of
7 the partial unemployment system; and
8 (2) To extend the duration of employees' eligibility for
9 unemployment benefits under partial unemployment from
10 four weeks to eight weeks.

11 SECTION 2. Chapter 383, Hawaii Revised Statutes, is
12 amended by adding four new sections to part II to be
13 appropriately designated and to read as follows:

14 "§383-A Partial unemployment; eligibility. A new claim or
15 an initial additional claim for partial unemployment benefits
16 may be filed as the department prescribes for any week only if
17 the individual:

- 18 (1) Is a full-time worker;
19 (2) Is attached to the individual's regular employer, as
20 defined in section 383-1;



1 (3) Worked less than or did not work the individual's
2 normal, customary full-time hours, as defined in
3 section 383-1, for that week;

4 (4) Had no earnings or earned less than the individual's
5 weekly benefit amount for that week; and

6 (5) Was unemployed due to a lack of full-time work, as
7 defined in section 383-1, for that week.

8 §383-B Partial unemployment; claim filing requirements,

9 determinations. (a) Claims for partial unemployment shall be
10 filed according to section 383-32. For partially unemployed
11 individuals, a new claim may be taken within twenty-eight days
12 from the week ending date of the first week of partial
13 unemployment for which the claim is filed; provided that an
14 individual shall not be required to file a claim earlier than
15 two weeks from the date wages are paid for the claim period.

16 (b) Continued claim certifications for partial benefits
17 shall be filed as follows:

18 (1) An individual may file a continued claim certification
19 for partial unemployment benefits in person, by mail,
20 by telephone, or by using other alternative claim
21 filing procedures as instructed or authorized by the
22 department and in the manner prescribed by the



1 department with respect to each week of the
2 individual's partial unemployment. A continued claim
3 certification shall be filed in the same manner as
4 prescribed in rules of the department for continued
5 claim certifications for total or part-total
6 unemployment benefits and not later than twenty-eight
7 days from the end of the week for which the individual
8 claims benefits; provided that an individual shall not
9 be required to file a continued claim certification
10 earlier than two weeks from the date wages are paid
11 for a claim period.

12 (2) If, after a week of partial unemployment, eight or
13 fewer consecutive weeks of total unemployment follow
14 the week of partial unemployment, the weeks of total
15 unemployment may be deemed weeks of partial
16 unemployment. However, if total unemployment extends
17 beyond eight consecutive weeks, the individual shall
18 be deemed totally unemployed.

19 (3) Notwithstanding paragraph (2), the department may
20 extend partial unemployment beyond eight consecutive
21 weeks of total unemployment under conditions including
22 but not limited to:



1 (A) The individual is retained in an employer-
2 employee relationship;

3 (B) The individual is under obligation to reserve
4 services for the employer; and

5 (C) The individual has a definite or reasonably
6 imminent return to work date.

7 (c) Determinations of claims shall be made by the
8 department in accordance with sections 383-33 to 383-45 and
9 based upon an equitable distribution of benefits as determined
10 by the department.

11 §383-C Partial unemployment; waivers. (a) The
12 registration for work requirements under section 383-29(a) may
13 be waived for individuals who are partially unemployed, as
14 defined in section 383-1.

15 (b) An individual may be exempted from the work search
16 requirements as determined by rules of the department, or be
17 subject to modified work search requirements as authorized by
18 the department if the individual is waived from the registration
19 for work requirements, as defined in section 383-1.

20 §383-D Partial unemployment; reporting requirements. (a)
21 An employer to whom a claimant for partial unemployment is still
22 attached shall submit verification of earnings and satisfy all



1 low earnings reporting requirements in subsection (b) and rules
2 of the department for each week that the claimant certifies for
3 partial unemployment benefits.

4 (b) Low earnings reports shall be submitted as follows:

5 (1) Whenever, during any weekly pay period in an
6 individual's benefit year, an individual has worked
7 less than full-time hours for the regular employer to
8 which the individual is attached, and the individual's
9 earnings are less than the individual's current weekly
10 benefit amount, the individual's employer shall, upon
11 request by the department:

12 (A) Enter the individual's name, social security
13 account number, gross earnings, week-ending date,
14 and the reasons for the individual's reduced work
15 week on a list form provided or approved by the
16 department and return the form to the
17 unemployment insurance office as instructed
18 within five working days after the notice of an
19 individual's benefit amount has been mailed to
20 the employer as to all prior weeks for which
21 benefits are claimed. Thereafter, during the
22 benefit year, the employer shall report within



1 five working days after the end of each week or
2 weekly pay period for which the low earnings
3 reports are required; or

4 (B) Furnish the individual personally with the
5 information on a form provided or approved by the
6 department and the individual shall be
7 responsible to submit the report to the
8 unemployment office within five working days
9 after the end of each week or weekly pay period
10 or as instructed by the department.

11 (2) If the employer or individual fails to submit the low
12 earnings report as prescribed in subparagraphs (A) or
13 (B) within the time specified by the department, the
14 department shall determine the individual's
15 eligibility for any week's benefits claimed based on
16 the individual's certification of employment and
17 earnings."

18 SECTION 3. Section 383-1, Hawaii Revised Statutes, is
19 amended by adding four new definitions to be appropriately
20 inserted and to read as follows:

21 "Attached to a regular employer" means:



1 (1) The employee is being offered work each week by the
2 employee's regular employer; or

3 (2) If no work is being offered:

4 (A) The employer is maintaining the individual on the
5 payroll by paying for a medical insurance plan or
6 by maintaining the employee's sick leave or
7 vacation credits; or

8 (B) There is a definite return to work date with the
9 same employer within eight weeks.

10 "Full-time" means a forty-hour work week unless regarded
11 otherwise according to the standard practice, custom, or
12 agreement in a particular trade, occupation, or business.

13 "Partial unemployment" means the unemployment of any
14 individual who, during a particular week, was still attached to
15 that individual's regular employer, had no earnings or earned
16 less than that individual's weekly benefit amount, and who
17 worked less than or did not work that individual's normal,
18 customary full-time hours for the individual's regular employer
19 because of a lack of full-time work.

20 "Registered for work" or "registration for work" means that
21 an individual shall provide information to the employment office
22 to be posted on the department's internet job-matching system,



1 including but not limited to the individual's name, job skills,
2 education, training, prior employment history and work duties,
3 preferred working conditions, occupational licenses, and other
4 relevant occupational information to facilitate work search
5 efforts by the individual and increase job referrals by the
6 employment office. The information shall be posted with the
7 department's assistance or independently by the individual. The
8 employment office shall provide the necessary information to the
9 unemployment office for purposes of determining that the
10 individual's registration for work requirements have been met."

11 SECTION 4. Section 383-29, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

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

16 (1) The individual has made a claim for benefits with
17 respect to that week in accordance with rules the
18 department may prescribe[+] and with section 383-B for
19 partially unemployed individuals;

20 (2) The individual has registered for work at, and
21 thereafter continued to report at, an employment
22 office, as defined in section 383-1, in accordance



1 with rules the department may prescribe, except that
2 the department, by rule, may waive or alter either or
3 both of the requirements of this paragraph [~~as to~~] for
4 partially unemployed individuals pursuant to
5 section 383-C, individuals attached to regular jobs,
6 and [~~as to~~] other types of cases or situations with
7 respect to which it finds that compliance with those
8 requirements would be oppressive, or would be
9 inconsistent with the purpose of this chapter;
10 provided that no [~~such~~] rule shall conflict with
11 section 383-21;

- 12 (3) The individual is able to work and is available for
13 work; provided that no claimant shall be considered
14 ineligible with respect to any week of unemployment
15 for failure to comply with this paragraph if the
16 failure is due to an illness or disability, as
17 evidenced by a physician's certificate, which occurs
18 during an uninterrupted period of unemployment with
19 respect to which benefits are claimed and no work
20 which would have been suitable prior to the beginning
21 of the illness and disability has been offered the
22 claimant;



- 1 (4) The individual has been unemployed for a waiting
2 period of one week within the individual's benefit
3 year. No week shall be counted as a waiting period:
4 (A) If benefits have been paid with respect thereto;
5 (B) Unless the individual was eligible for benefits
6 with respect thereto as provided in this section
7 and section 383-30, except for the requirements
8 of this paragraph;
- 9 (5) In the case of an individual whose benefit year
10 begins:
11 (A) On or after January 2, 1966, but prior to
12 October 1, 1989, the individual has had during
13 the individual's base period a total of fourteen
14 or more weeks of employment, as defined in
15 section 383-1, and has been paid wages for
16 insured work during the individual's base period
17 in an amount equal to at least thirty times the
18 individual's weekly benefit amount as determined
19 under section 383-22(b). For the purposes of
20 this subparagraph, wages for insured work shall
21 include wages paid for services:



- 1 (i) Which were not employment, as defined in
2 section 383-2, or pursuant to an election
3 under section 383-77 prior to January 1,
4 1978, at any time during the one-year period
5 ending December 31, 1975; and
- 6 (ii) Which are agricultural labor, as defined in
7 section 383-9 except service excluded under
8 section 383-7(1), or are domestic service
9 except service excluded under section
10 383-7(2); except to the extent that
11 assistance under Title II of the Emergency
12 Jobs and Unemployment Assistance Act of 1974
13 was paid on the basis of those services;
- 14 (B) On and after October 1, 1989, to January 4, 1992,
15 the individual has been employed, as defined in
16 section 383-2, and has been paid wages for
17 insured work during the individual's base period
18 in an amount equal to not less than thirty times
19 the individual's weekly benefit amount, as
20 determined under section 383-22(b), and the
21 individual has been paid wages for insured work
22 during at least two quarters of the individual's



1 base period; provided that no otherwise eligible
2 individual who established a prior benefit year
3 under this chapter or the unemployment
4 compensation law of any other state, shall be
5 eligible to receive benefits in a succeeding
6 benefit year until, during the period following
7 the beginning of the prior benefit year, that
8 individual worked in covered employment for which
9 wages were paid in an amount equal to at least
10 five times the weekly benefit amount established
11 for that individual in the succeeding benefit
12 year; and

13 (C) After January 4, 1992, the individual has been
14 employed, as defined in section 383-2, and has
15 been paid wages for [such] insured work during
16 the individual's base period in an amount equal
17 to not less than twenty-six times the
18 individual's weekly benefit amount, as determined
19 under section 383-22(b), and the individual has
20 been paid wages for insured work during at least
21 two quarters of the individual's base period;
22 provided that no otherwise eligible individual



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

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

19 Effective for benefit years beginning January 1,
20 2004, and thereafter, if an individual fails to
21 establish a valid claim for unemployment insurance
22 benefits under this paragraph, the department shall



1 make a redetermination of entitlement based upon the
2 alternative base period, as defined in section 383-1;
3 provided further that the individual shall satisfy the
4 conditions of section 383-29(a) (5) that apply to
5 claims filed using the base period, as defined in
6 section 383-1, and the establishment of claims using
7 the alternative base period shall be subject to the
8 terms and conditions of sections 383-33 and 383-94;
9 and

- 10 (6) Effective November 24, 1994, an individual who has
11 been referred to reemployment services pursuant to the
12 profiling system under section 383-92.5 participates
13 in those services or in similar services. The
14 individual may not be required to participate in
15 reemployment services if the department determines the
16 individual has completed those services, or there is
17 justifiable cause for the claimant's failure to
18 participate in those services.

19 For the purposes of this subsection, employment and wages
20 used to establish a benefit year shall not thereafter be reused
21 to establish another benefit year."



1 SECTION 5. In codifying the new sections added by
 2 section 1 of this Act, the revisor of statutes shall substitute
 3 appropriate section numbers for the letters used in designating
 4 the new sections in this Act.

5 SECTION 6. Statutory material to be repealed is bracketed
 6 and stricken. New statutory material is underscored.

7 SECTION 7. This Act shall take effect on July 1, 2009, and
 8 shall be repealed on July 1, 2012; provided that on July 1,
 9 2012, sections 383-1 and 383-29(a) shall be reenacted in the
 10 same form in which they read on June 30, 2009.

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Report Title:

Employment Security; Partial Unemployment; Unemployment Benefits

Description:

Adds definitions relating to partial unemployment and sets out claimants' eligibility, claims filing, and registration requirements, and employers' reporting requirements for partial unemployment.

