

JAN 26 2011

A BILL FOR AN ACT

RELATING TO EMPLOYMENT SECURITY.

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

1 SECTION 1. Section 383-1, Hawaii Revised Statutes, is
2 amended by amending the definition of "employing unit" to read
3 as follows:

4 ""Employing unit" means any individual, sole proprietor, or
5 type of organization, including the State, any of its political
6 subdivisions, any instrumentality of the State or its political
7 subdivisions, any partnership, association, trust, estate,
8 joint-stock company, insurance company, or corporation, whether
9 domestic or foreign, or the receiver, trustee in bankruptcy,
10 trustee, or successor of any of the foregoing, or the legal
11 representative of a deceased person, which has or subsequent to
12 January 1, 1937, had one or more individuals performing services
13 for it within this State.

14 (1) All individuals performing services within this State
15 for any employing unit which maintains two or more
16 separate establishments within this State shall be
17 deemed to be performing services for a single
18 employing unit for all the purposes of this chapter.



1 (2) Each individual employed to perform or to assist in
2 performing the work of any person in the service of an
3 employing unit shall be deemed to be engaged by the
4 employing unit for all the purposes of this chapter,
5 whether the individual was hired or paid directly by
6 the employing unit or by such person, provided the
7 employing unit had actual or constructive knowledge of
8 the work."

9 SECTION 2. Section 383-7, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) "Employment" shall not include:

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

15 (A) That, during each calendar quarter in both the
16 current and the preceding calendar years, paid
17 less than \$20,000 in cash remuneration to
18 individuals employed in agricultural labor,
19 including labor performed by an alien referred to
20 in subparagraph (C); and

21 (B) That had, in each of the current and the
22 preceding calendar years:



- 1 (i) No more than nineteen calendar weeks,
2 whether consecutive or not, in which
3 agricultural labor was performed by its
4 employees, including labor performed by an
5 alien referred to in subparagraph (C); or
- 6 (ii) No more than nine individuals in its employ
7 performing agricultural labor in any one
8 calendar week, whether or not the same
9 individuals performed the labor in each
10 week, including labor performed by an alien
11 referred to in subparagraph (C); or
- 12 (C) If such agricultural labor is performed by an
13 individual who is an alien admitted to the United
14 States to perform agricultural labor pursuant to
15 sections 214(c) and 101(a)(15)(H) of the
16 Immigration and Nationality Act;
- 17 (2) Domestic service in a private home, local college
18 club, or local chapter of a college fraternity or
19 sorority as set forth in section 3306(c)(2) of the
20 Internal Revenue Code of 1986, as amended;
- 21 (3) Service not in the course of the employing unit's
22 trade or business performed in any calendar quarter by



1 an individual, unless the cash remuneration paid for
2 the service is \$50 or more and the service is
3 performed by an individual who is regularly employed
4 by the employing unit to perform the service. For the
5 purposes of this paragraph, an individual shall be
6 deemed to be regularly employed to perform service not
7 in the course of an employing unit's trade or business
8 during a calendar quarter if:

9 (A) On each of some twenty-four days during the
10 quarter the individual performs the service for
11 some portion of the day; or

12 (B) The individual was regularly employed as
13 determined under subparagraph (A) by the
14 employing unit in the performance of the service
15 during the preceding calendar quarter;

16 (4) (A) Service performed on or in connection with a
17 vessel not an American vessel, if the individual
18 performing the service is employed on and in
19 connection with the vessel when outside the
20 United States;

21 (B) Service performed by an individual in (or as an
22 officer or member of the crew of a vessel while



1 it is engaged in) the catching, taking,
2 harvesting, cultivating, or farming of any kind
3 of fish, shellfish, crustacea, sponges, seaweeds,
4 or other aquatic forms of animal and vegetable
5 life, including service performed as an ordinary
6 incident thereto, except:

7 (i) The service performed in connection with a
8 vessel of more than ten net tons (determined
9 in the manner provided for determining the
10 register tonnage of merchant vessels under
11 the laws of the United States);

12 (ii) The service performed in connection with a
13 vessel of ten net tons or less (determined
14 in the manner provided for determining the
15 register tonnage of merchant vessels under
16 the laws of the United States) by an
17 individual who is employed by an employing
18 unit [~~which~~] that had in its employ one or
19 more individuals performing the service for
20 some portion of a day in each of twenty
21 calendar weeks all occurring, whether



1 consecutive or not, in either the current or
2 the preceding calendar year; and
3 (iii) Service performed in connection with the
4 catching or taking of salmon or halibut for
5 commercial purposes;
6 (5) Service performed by an individual in the employ of
7 the individual's son, daughter, or spouse, and service
8 performed by a child under the age of twenty-one in
9 the employ of the child's father or mother;
10 (6) Service performed in the employ of the United States
11 government or an instrumentality of the United States
12 exempt under the Constitution of the United States
13 from the contributions imposed by this chapter, except
14 that to the extent that the Congress of the United
15 States permits states to require any instrumentalities
16 of the United States to make payments into an
17 unemployment fund under a state unemployment
18 compensation law, all of the provisions of this
19 chapter shall apply to those instrumentalities, and to
20 services performed for those instrumentalities, in the
21 same manner, to the same extent, and on the same terms
22 as to all other employers, employing units,



1 individuals, and services; provided that if this State
2 is not certified for any year by the Secretary of
3 Labor under section 3304(c) of the [~~federal~~] Internal
4 Revenue Code[~~7~~] of 1986, as amended, the payments
5 required of those instrumentalities with respect to
6 that year shall be refunded by the department of labor
7 and industrial relations from the fund in the same
8 manner and within the same period as is provided in
9 section 383-76 with respect to contributions
10 erroneously collected;

- 11 (7) Service performed in the employ of any other state, or
12 any political subdivision thereof, or any
13 instrumentality of any one or more of the foregoing
14 [~~which~~] that is wholly owned by one or more states or
15 political subdivisions; and any service performed in
16 the employ of any instrumentality of one or more other
17 states or their political subdivisions to the extent
18 that the instrumentality [~~is~~], with respect to the
19 service, is exempt from the tax imposed by section
20 3301 of the Internal Revenue Code of 1986, as amended;



- 1 (8) Service with respect to which unemployment
2 compensation is payable under an unemployment system
3 established by an act of Congress;
- 4 (9) (A) Service performed in any calendar quarter in the
5 employ of any organization exempt from income tax
6 under section 501(a) of the [~~federal~~] Internal
7 Revenue Code of 1986, as amended (other than an
8 organization described in section 401(a) or under
9 section 521 of the Internal Revenue Code), if:
- 10 (i) The remuneration for the service is less
11 than \$50; or
- 12 (ii) The service is performed by a fully
13 ordained, commissioned, or licensed minister
14 of a church in the exercise of the
15 minister's ministry or by a member of a
16 religious order in the exercise of duties
17 required by the order;
- 18 (B) Service performed in the employ of a school,
19 college, or university, if the service is
20 performed by a student who is enrolled and is
21 regularly attending classes at the school,
22 college, or university; or



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

16 (10) Service performed in the employ of a foreign
17 government, including service as a consular or other
18 officer or employee of a nondiplomatic representative;

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

21 (A) If the service is of a character similar to that
22 performed in foreign countries by employees of



1 the United States government or of an
2 instrumentality thereof; and

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

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

21 (13) Service performed by an individual for an employing
22 unit as an insurance producer, if all service



1 performed by the individual for the employing unit is
2 performed for remuneration solely by way of
3 commission;

4 (14) Service performed by an individual under the age of
5 eighteen in the delivery or distribution of newspapers
6 or shopping news, not including delivery or
7 distribution to any point for subsequent delivery or
8 distribution;

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

17 (16) Service performed by an individual who, pursuant to
18 the Federal Economic Opportunity Act of 1964, is not
19 subject to the federal laws relating to unemployment
20 compensation;

21 (17) Service performed by an individual for an employing
22 unit as a real estate salesperson, if all service



1 performed by the individual for the employing unit is
2 performed for remuneration solely by way of
3 commission;

4 (18) Service performed by a registered sales representative
5 for a registered travel agency, when the service
6 performed by the individual for the travel agent is
7 performed for remuneration by way of commission;

8 (19) Service performed by a vacuum cleaner salesperson for
9 an employing unit, if all services performed by the
10 individual for the employing unit are performed for
11 remuneration solely by way of commission;

12 (20) Service performed for a family-owned private
13 corporation organized for profit that employs only
14 members of the family who each own at least fifty per
15 cent of the shares issued by the corporation; provided
16 that:

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

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



- 1 (C) No more than two members of a family may be
- 2 eligible per entity for exclusion under this
- 3 paragraph;
- 4 (D) The exclusion shall be irrevocable for five
- 5 years;
- 6 (E) The family-owned private corporation presents to
- 7 the department proof that it has paid federal
- 8 unemployment insurance taxes as required by
- 9 federal law; and
- 10 (F) The election to be excluded from coverage shall
- 11 be effective the first day of the calendar
- 12 quarter in which the application and all
- 13 substantiating documents requested by the
- 14 department are filed with the department;
- 15 (21) Service performed by a direct seller as defined in
- 16 section 3508 of the Internal Revenue Code of 1986;
- 17 (22) Service performed by an election official or election
- 18 worker as defined in section 3309(b)(3)(F) of the
- 19 Internal Revenue Code of 1986, as amended;
- 20 (23) Service performed by an inmate or any person committed
- 21 to a penal institution; [and]



1 (24) Domestic in-home and community-based services for
2 persons with developmental disabilities and mental
3 retardation under the medicaid home and
4 community-based services program pursuant to Title 42
5 Code of Federal Regulations sections 440.180 and
6 441.300, and Title 42 Code of Federal Regulations,
7 Part 434, Subpart A, as amended, and identified as
8 chore, personal assistance and habilitation,
9 residential habilitation, supported employment,
10 respite, and skilled nursing services, as the terms
11 are defined and amended from time to time by the
12 department of human services, performed by an
13 individual whose services are contracted by a
14 recipient of social service payments and who
15 voluntarily agrees in writing to be an independent
16 contractor of the recipient of social service payments
17 unless the individual is an employee and not an
18 independent contractor of the recipient of social
19 service payments under the Federal Unemployment Tax
20 Act[-]; and

21 (25) Service performed by a sole proprietor, regardless of
22 incorporation, who has no other employees besides the



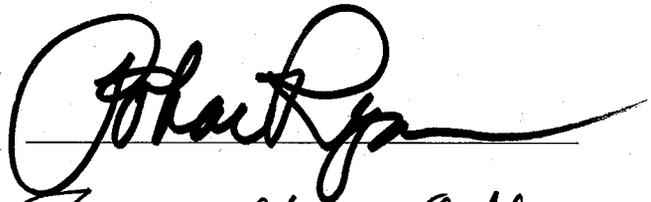
1 sole proprietor; provided that the sole proprietor may
2 elect coverage under section 383-77."

3 SECTION 3. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:



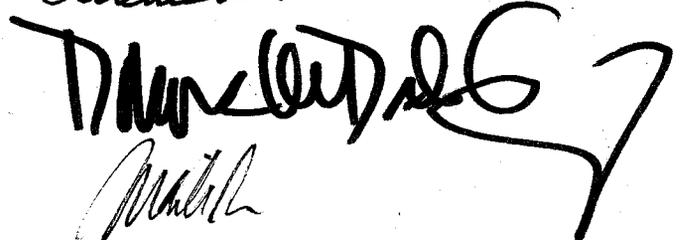
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Report Title:

Employment Security; Sole Proprietors

Description:

Excludes sole proprietors from the employment security laws, but allows them to elect to be covered.

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