

S.B. NO. 2838

JAN 25 2012

A BILL FOR AN ACT

RELATING TO EMPLOYMENT SECURITY LAW.

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

1 SECTION 1. Section 383-69, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§383-69 Procedure for rate determination.** The department
4 of labor and industrial relations, as soon as is reasonably
5 possible in each period, shall make its classification of
6 employers for such period and notify each employer of the
7 employer's rate of contributions for such period as determined
8 pursuant to sections 383-63 to 383-69. The determination shall
9 become conclusive and binding upon the employer unless[7] the
10 employer appeals the determination by filing a written notice of
11 appeal within fifteen days after the mailing of notice thereof
12 to the employer's last known address[7, ~~or in the absence of~~
13 ~~mailing within fifteen days after the delivery of the notice to~~
14 ~~the employer, the employer files an application for review and~~
15 ~~redetermination, setting forth the employer's reasons therefor.~~
16 ~~If the department grants the review, the employer shall be~~
17 ~~promptly notified thereof and shall be granted an opportunity~~
18 ~~for a fair hearing,].~~ The appeal shall be heard by the referee

S.B. NO. 2838

1 in accordance with applicable provisions of sections 383-38 and
2 383-39 but no employer shall have standing, in any proceeding
3 involving the employer's rate of contributions or contribution
4 liability, to contest the chargeability to the employer's
5 account of any benefits paid in accordance with a determination,
6 redetermination, or decision pursuant to sections 383-31 to 383-
7 43; provided that the services on the basis of which the
8 benefits were found to be chargeable did not constitute services
9 performed in employment for the employer and only in the event
10 that the employer was not a party to the determination,
11 redetermination, or decision, or to any other proceedings under
12 this chapter in which the character of the services was
13 determined. ~~[The employer shall be promptly notified of the~~
14 ~~department's denial of the employer's application, or of the~~
15 ~~department's redetermination, both of which shall become final~~
16 ~~unless a proceeding for judicial review in the manner provided~~
17 ~~in chapter 91 is commenced in the circuit court of the judicial~~
18 ~~circuit in which the employer resides or has the employer's~~
19 ~~principal place of business or in the circuit court of the first~~
20 ~~judicial circuit. The proceedings shall be heard in a summary~~
21 ~~manner and shall be given precedence over all other civil~~
22 ~~actions, except for proceedings arising under section 383-41 and~~
23 ~~the workers' compensation law of the State. An appeal may be~~

S.B. NO. 2838

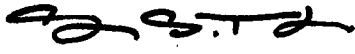
1 ~~taken from the decision of the circuit court to the intermediate~~
2 ~~appellate court, subject to chapter 602.]"~~

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

5 SECTION 3. This act shall take effect upon its approval.

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INTRODUCED BY: 

8

BY REQUEST

S.B. NO. 2838

Report Title:

Employment Security

Description:

Amends the procedure for rate determination to clarify that the department's determination must be appealed to the referee and not directly to circuit court.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO EMPLOYMENT SECURITY LAW.

PURPOSE: The purpose of this bill is to clarify the procedure for appeal of the employer's contribution rate notice.

MEANS: Amend section 383-69, Hawaii Revised Statutes.

JUSTIFICATION: The proposed language provides an appeal process to the Employment Security Appeals Referees' Office (ESARO) followed by an appeal to the circuit court level, which is the practice currently in place as all appeals of the department's determinations are first heard by the ESARO. The existing provision is confusing as the circuit court appeared to be the next appellate level after the department's determination or redetermination.

Impact on the public: Clarifies the appeal process for the employers.

Impact on the department and other agencies: ESARO may experience more appeals on contribution rate notices as the department would process protests to the rate determination as appeals.

GENERAL FUND: None.

OTHER FUNDS: Federal.

PPBS PROGRAM DESIGNATION: LBR-171.

OTHER AFFECTED AGENCIES: Employment Security Appeals Referees' Office.

SB. NO. 2838

EFFECTIVE DATE: Upon approval.