

JAN 20 2017

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 economy is
2 changing and increasing numbers of individuals are facing
3 decisions on whether to choose to become entrepreneurs and go
4 into business for themselves or remain in employment
5 relationships and maintain the protections afforded by various
6 labor laws, including Hawaii's employment security law. The
7 legislature further finds that many of these individuals may not
8 be aware of the criteria used by the department of labor and
9 industrial relations when making determinations as to whether an
10 individual is in an employment relationship or is a bona fide
11 independent contractor.

12 Accordingly, the purpose of this Act is to provide greater
13 clarity in Hawaii's employment security law to those individuals
14 choosing to become entrepreneurs by setting forth in greater
15 detail the criteria used to determine independent contractor
16 status.



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

3 "§383-6 [~~Master and servant relationship, not required~~
4 ~~when.]~~ Independent Contract. (a) Services performed by an
5 individual for wages or under any contract of hire shall be
6 deemed to be employment subject to this chapter irrespective of
7 whether the common law relationship of [~~master and servant~~
8 employer and employee exists unless and until it is shown to the
9 satisfaction of the department [~~of labor and industrial~~
10 ~~relations]~~ that[+] in the department's determination, a
11 preponderance of the factors set forth in subsection (b) has
12 been met and that:

13 (1) The individual has been and will continue to be free
14 from control or direction over the performance of such
15 service, both under the individual's contract of hire
16 and in fact;

17 (2) The service is either outside the usual course of the
18 business for which the service is performed or that
19 the service is performed outside of all the places of
20 business of the enterprise for which the service is
21 performed; and



1 (3) The individual is customarily engaged in an
2 independently established trade, occupation,
3 profession, or business of the same nature as that
4 involved in the contract of service.

5 (b) Under Internal Revenue Service rules and common law,
6 independent contractors control the manner and means by which
7 contracted services, products, or results are achieved. The
8 twenty factors set forth below shall be guidelines for
9 determining whether an individual could be deemed an independent
10 contractor. An individual shall not have to meet all twenty
11 factors to qualify as an independent contractor. The degree of
12 importance of each factor may vary, depending on the occupation
13 and the individual facts of each case as determined by the
14 department. A preponderance of the following twenty factors may
15 indicate a worker is an independent contractor if the
16 independent contractor:

17 (1) Controls how the work results are achieved, although
18 the client may provide job specifications;

19 (2) Uses the independent contractor's own methods and does
20 not receive client-provided training;



- 1 (3) Performs work that is not part of the client's regular
- 2 line of business;
- 3 (4) Is engaged to provide a result and may hire others to
- 4 achieve that result;
- 5 (5) Retains control and responsibility over the hiring,
- 6 paying, and supervising of the independent
- 7 contractor's assistants;
- 8 (6) Does not maintain a continuing relationship with the
- 9 client;
- 10 (7) Has flexibility of schedule and sets the independent
- 11 contractor's own work hours;
- 12 (8) Has the ability to choose when and for whom the
- 13 independent contractor works;
- 14 (9) Controls the job location and is not required to work
- 15 on a client's premises;
- 16 (10) Sets the order and sequence of work to be performed;
- 17 (11) Provides final results, as specified in the contract;
- 18 (12) Is paid by the job for results;
- 19 (13) Is responsible for the independent contractor's
- 20 incidental business expenses;



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- 1 (14) Furnishes the independent contractor's own tools and
2 materials;
- 3 (15) May invest in and maintain the independent
4 contractor's own work facilities that the contractor
5 may use to perform services for clients;
- 6 (16) Can realize a profit or suffer a loss as a result of
7 the independent contractor's services;
- 8 (17) Is able to simultaneously provide services to multiple
9 unrelated clients;
- 10 (18) Makes services available to the general public on a
11 regular and consistent basis, in at least one of the
12 following ways: having an office and assistants;
13 having business signs; having a general excise tax
14 license; listing services in a business directory; or
15 advertising services;
- 16 (19) Cannot be discharged; provided that the independent
17 contractor produces a result that meets contract
18 specifications; and
- 19 (20) Agrees to satisfactorily complete a specific job and
20 cannot terminate services without liability, except as
21 provided under the contract.



1 (c) For purposes of this section:

2 "Client" means an entity or individual that obtains
3 services or receives products or results from an independent
4 contractor. A client has the right to control or direct only
5 the result of the work of an independent contractor and does not
6 have the right to control or direct the manner and means used by
7 an independent contractor to accomplish the result.

8 "Independent contractor" means an individual customarily
9 engaged in an independently established trade, occupation,
10 profession, or business who is performing services or providing
11 products or results and who is established in the business of
12 performing those services or providing those products or results
13 independent of the connection the individual may have with a
14 client. An independent contractor has no expectation of
15 benefits that would normally accrue from an employer-employee
16 relationship and is responsible for obtaining a current general
17 excise tax license and for paying all applicable taxes."

18 SECTION 3. The director of labor and industrial relations
19 shall submit a report to the legislature no later than twenty
20 days prior to the convening of the regular session of 2018 on
21 the guidelines developed by the unemployment insurance coverage



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1 committee to assist auditors in applying section 383-6, Hawaii
2 Revised Statutes, during the auditor's investigations.

3 SECTION 4. The director of labor and industrial relations
4 shall submit a report to the legislature no later than twenty
5 days prior to the convening of each regular session regarding
6 the number of determinations applying section 383-6, Hawaii
7 Revised Statutes, rendered by the department of labor and
8 industrial relations' unemployment insurance division and
9 employment security appeals referee's office finding both
10 independent contractor and covered employment status.

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

13 SECTION 6. This Act shall take effect upon its approval.
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INTRODUCED BY:

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|--------------------------|------------------------|
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Report Title:

Employment Security; Independent Contractor; Guidelines;
Department of Labor and Industrial Relations

Description:

Clarifies Hawaii's employment security law for independent contractors. Includes twenty factors to be used as guidelines when determining whether an individual could be an independent contractor. Retains the ability of the department of labor and industrial relations to determine if an individual is an independent contractor. Requires the director of labor and industrial relations to report to the legislature prior to the regular session of 2018 regarding guidelines developed by the unemployment insurance coverage committee. Requires an annual report to the legislature regarding covered employment determinations.

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

