
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 virus known as
2 "SARS-CoV-2" causes a disease named "coronavirus disease 2019"
3 (COVID-19), which spread globally and was declared a pandemic by
4 the World Health Organization on March 11, 2020. Upon reaching
5 Hawaii's shores, the COVID-19 outbreak disrupted the local
6 economy, leaving hundreds of thousands of residents unemployed,
7 underemployed, or facing financial hardship. Low-wage workers
8 were disproportionately harmed by Hawaii's economic downturn,
9 which worsened their financial precarity and left thousands of
10 working families unable to pay for food, housing, electricity,
11 and other necessities.

12 The legislature further finds that at the peak of Hawaii's
13 economic downturn, the State experienced levels of unemployment
14 not seen since the Great Depression. For example, the
15 unemployment rate in Kahului skyrocketed to thirty-five per cent
16 in April, nearly ten per cent higher than the national
17 unemployment rate at the peak of the Great Depression and the



1 highest of any metropolitan area in the United States at the
2 time, according to the United States Bureau of Labor Statistics.

3 The legislature additionally finds that work-sharing
4 programs benefit workers by advancing employment security during
5 times of financial hardship. According to the United States
6 Department of Labor, work-sharing programs are lay-off aversion
7 programs in which an employer, under a state-approved plan,
8 reduces the hours for a group of workers, with those workers in
9 turn receiving a reduced unemployment benefit payment. In the
10 context of re-opening businesses closed temporarily by a
11 pandemic, work-sharing programs can also serve as a means of
12 bringing most or all of a temporarily laid-off workforce back
13 to the job, even if social-distancing measures, a decline in
14 business, or other factors prevent operating at full staffing
15 levels full-time.

16 The legislature notes that work-sharing benefits may be
17 made available to individuals returning to work with reduced
18 hours who worked for the employer prior to the temporary lay-
19 off, thereby preserving employees' jobs and employers' trained
20 workforces during a disruption to regular business activity.
21 Work-sharing benefit payments dampen the adverse effect of the



1 reduction in business activity on workers and, by maintaining
2 their connection to their employers, ensure that these workers
3 will be available to resume employment when business demand
4 increases.

5 Accordingly, the purpose of this Act is to strengthen
6 employment security by establishing a work-sharing program for
7 the private sector.

8 SECTION 2. Chapter 383, Hawaii Revised Statutes, is
9 amended by adding a new part to be appropriately designated and
10 to read as follows:

11 "PART . WORK-SHARING PROGRAM

12 §383-A Definitions. As used in this part:

13 "Affected unit" means a specified plant, department, shift,
14 or other definable unit consisting of two or more eligible
15 employees to which a work-sharing plan applies.

16 "Department" means the department of labor and industrial
17 relations.

18 "Director" means the director of labor and industrial
19 relations.

20 "Eligible employee" means an individual who usually works
21 for an eligible employer who submits a work-sharing plan.



1 "Eligible employer" means a private employer:

2 (1) Who has had contributions credited to the private
3 employer's account;

4 (2) To whose account benefits have been chargeable; and

5 (3) Who is not delinquent in the payment of contributions
6 or reimbursements or in the reporting of wages.

7 "Fringe benefits" includes but is not limited to health
8 insurance, retirement benefits, paid vacation and holidays, sick
9 leave, and similar advantages that are incidents of employment.

10 "Intermittent employment" means employment that is not
11 continuous but may consist of intervals of weekly work and
12 intervals of no weekly work.

13 "Seasonal employment" means employment in seasonal
14 industries within the determined seasonal period or periods.

15 "Seasonal industry" means an industry in which it is
16 customary to operate only during a regularly recurring period or
17 periods of less than twenty-six weeks in a calendar year.

18 "Temporary layoff" means the layoff of employees in an
19 affected unit for an indefinite period expected to last for at
20 least two months but less than six months.



1 "Usual weekly hours of work" means the normal or regular
2 hours of work each week for an eligible employee in an affected
3 unit when that unit is operating on a full-time basis, not to
4 exceed forty hours a week and not including overtime.

5 "Work-sharing benefits" means benefits payable to eligible
6 employees in an affected unit under an approved work-sharing
7 plan.

8 "Work-sharing employer" means an eligible employer with an
9 approved work-sharing plan in effect.

10 "Work-sharing plan" means a plan submitted to the director
11 by an eligible employer under which there is a reduction in the
12 number of hours worked by the eligible employees in the affected
13 unit in lieu of temporary layoffs of some of the employees.

14 **§383-B Work-sharing program established; eligibility.** The
15 director shall establish and administer a work-sharing program
16 in accordance with this part; provided that:

17 (1) No employee shall be eligible for work-sharing
18 benefits under this part unless the employee has
19 thirty hours or more of usual weekly hours of work for
20 the employer submitting a work-sharing plan; and



1 (2) No employer may submit or administer a work-sharing
2 plan under this part unless the employer is a private
3 employer who has had contributions credited to the
4 employer's account, to whose account benefits have
5 been chargeable, and who is not delinquent in the
6 payment of contributions or reimbursements.

7 §383-C Criteria for approval of a work-sharing plan. To
8 participate in a work-sharing plan under this part, an eligible
9 employer shall submit a signed work-sharing plan to the director
10 for approval. The director shall approve a work-sharing plan if
11 the following requirements are met:

12 (1) The work-sharing plan identifies the affected unit or
13 units and specifies the effective date of the plan;

14 (2) The work-sharing plan identifies the eligible
15 employees in the affected unit or units by name, last
16 four digits of each employee's social security number,
17 usual weekly hours of work, proposed wage and hour
18 reduction, and any other information that the director
19 requires;

20 (3) The work-sharing plan certifies that the reduction in
21 the usual weekly hours of work is in lieu of temporary



- 1 layoffs that would affect at least ten per cent of the
2 eligible employees in the affected unit and would
3 result in an equivalent reduction in work hours;
- 4 (4) Under the work-sharing plan, the usual weekly hours of
5 work for eligible employees in the affected unit shall
6 be reduced by at least ten per cent and not more than
7 fifty per cent and the reduction in hours in each
8 affected unit shall be spread equally among eligible
9 employees in the affected unit;
- 10 (5) The work-sharing plan shall specify the manner in
11 which the fringe benefits of the eligible employees
12 shall be affected;
- 13 (6) If eligible employees are represented by a collective
14 bargaining unit, the work-sharing plan shall be
15 approved in writing by the collective bargaining unit
16 that covers the affected eligible employees. In the
17 absence of a collective bargaining unit, the work-
18 sharing plan shall contain a certification by the
19 eligible employer that the proposed plan, or a summary
20 of the plan, has been made available to each eligible
21 employee in the affected unit;



- 1 (7) The work-sharing plan includes a statement that the
2 work-sharing plan shall not serve as a subsidy of
3 seasonal employment during the off-season or of
4 intermittent employment; and
- 5 (8) The eligible employer shall agree to furnish reports
6 relating to the proper conduct of the work-sharing
7 plan and shall agree to allow the director, the
8 director's designee, or authorized representatives of
9 the department access to all records necessary to
10 verify the plan prior to approval and to monitor and
11 evaluate application of the plan after approval.

12 **§383-D Approval or rejection of the work-sharing plan.**
13 The director shall approve or reject a work-sharing plan in
14 writing. The director's decision shall be final and shall not
15 be subject to appeal. The eligible employer may submit another
16 work-sharing plan for approval, and the director shall make a
17 determination based upon information contained in the new work-
18 sharing plan submitted by the eligible employer.

19 **§383-E Effective date and duration of the work-sharing**
20 **plan.** A work-sharing plan shall take effect on the date
21 specified in the plan or on the first Sunday following the date



1 on which the plan is approved by the director, whichever is
2 later. The work-sharing plan shall expire at the end of the
3 twelfth full calendar month after its effective date or on the
4 date specified in the plan if that date is earlier, unless the
5 plan is revoked by the director. If a plan is revoked by the
6 director, it shall terminate on the date specified in the
7 written order of revocation.

8 **§383-F Review; revocation of approval.** (a) The director
9 shall review the operation of each approved work-sharing plan at
10 least once during the period in which the plan is in effect to
11 ensure that it complies with the work-sharing plan requirements
12 under section 383-B. The director may revoke approval of a
13 work-sharing plan for good cause.

14 For the purposes of this subsection, "good cause" includes:

- 15 (1) Failure to comply with assurances given in the work-
16 sharing plan;
- 17 (2) Unreasonable revision of productivity standards for
18 the affected unit;
- 19 (3) Conduct or occurrences tending to defeat the intent
20 and effective operation of the plan; and



1 (4) Violation of any criteria on which approval of the
2 plan was based.

3 (b) A revocation order shall be in writing, state the
4 reason for revocation, and specify the date that the revocation
5 shall take effect. A revocation order shall be final and shall
6 not be subject to appeal.

7 (c) Action to revoke the work-sharing plan may be taken at
8 any time by the director on the director's own motion, on the
9 motion of any of the affected unit's eligible employees, or on
10 the motion of a collective bargaining unit that covers the
11 affected employees.

12 §383-G Modification of the work-sharing plan. (a) An
13 operational, approved work-sharing plan may be modified by the
14 eligible employer with the consent of the collective bargaining
15 unit that covers the affected employees, if any, if the
16 modification:

- 17 (1) Is not substantial;
18 (2) Conforms with the plan approved by the director; and
19 (3) Is reported promptly to the director by the eligible
20 employer.



1 (b) If the hours of work are increased or decreased
2 substantially beyond the level in the original work-sharing plan
3 or any other conditions are changed substantially, the director
4 shall approve or disapprove the modifications without changing
5 the expiration date of the original plan. If the substantial
6 modifications do not meet the requirements for approval under
7 section 383-B, the director shall disallow those modifications
8 in writing.

9 (c) A decision of the director under this section shall be
10 final and shall not be subject to appeal.

11 **§383-H Eligibility for work-sharing benefits.** (a) After
12 serving a waiting period as prescribed by the director, an
13 eligible employee shall be eligible to receive work-sharing
14 benefits with respect to any week only if the director finds
15 that, in addition to meeting other conditions of eligibility for
16 regular benefits under this part that are not inconsistent with
17 this section:

18 (1) During the week, the eligible employee shall be
19 employed as a member of an affected unit under an
20 approved work-sharing plan that was approved prior to



1 that week and that is in effect with respect to the
2 week for which work-sharing benefits are claimed; and

3 (2) The eligible employee is available and able to work
4 their usual workweek with the work-sharing employer.

5 (b) Notwithstanding any other provisions of this part to
6 the contrary, an eligible employee shall be deemed unemployed in
7 any week for which remuneration is payable to that eligible
8 employee as an eligible employee in an affected unit for less
9 than that eligible employee's usual weekly hours of work as
10 specified under the approved work-sharing plan in effect for the
11 week.

12 (c) Notwithstanding any other provisions of this chapter
13 to the contrary, an eligible employee shall not be denied work-
14 sharing benefits for any week due to the application of laws and
15 rules relating to the availability for work and active search
16 for work with an employer other than the work-sharing employer.

17 §383-I Work-sharing benefits. (a) The weekly work-
18 sharing benefit amount shall be the product of the regular
19 weekly benefit amount, including any dependent's allowances,
20 multiplied by the percentage reduction in the eligible
21 employee's usual weekly hours of work as specified in the



1 approved work-sharing plan. If the weekly work-sharing benefit
2 amount is not an exact multiple of \$1, the weekly work-sharing
3 benefit amount shall be rounded down to the next lower multiple
4 of \$1.

5 (b) An eligible employee shall not receive a total of
6 work-sharing benefits and regular unemployment compensation in
7 any benefit year that exceeds the maximum entitlement
8 established for unemployment compensation, nor shall an eligible
9 employee be paid work-sharing benefits for more than fifty-two
10 weeks in any benefit year pursuant to an approved work-sharing
11 plan.

12 (c) The work-sharing benefits paid shall be deducted from
13 the maximum entitlement amount established for an eligible
14 employee's benefit year.

15 (d) If an eligible employer approves time off and the
16 eligible employee has performed any amount of work during the
17 week, the eligible employee shall be eligible for work-sharing
18 benefits based on the combined work and paid leave hours for
19 that week. If the eligible employer does not grant time off,
20 the question of availability shall be investigated by the
21 director.



1 (e) If an eligible employee did not work all the hours
2 offered by the work-sharing employer in a given week because the
3 employee was sick, the employee shall be denied work-sharing
4 benefits for that week.

5 (f) Claims for work-sharing benefits shall be filed in the
6 same manner as claims for unemployment compensation or as
7 prescribed in rules adopted by the director pursuant to
8 chapter 91.

9 (g) Laws and rules applicable to unemployment compensation
10 claimants shall apply to work-sharing claimants to the extent
11 that they are not inconsistent with the established work-sharing
12 provisions. An eligible employee who files an initial claim for
13 work-sharing benefits, if the employee is eligible for work-
14 sharing benefits, shall be provided a monetary determination of
15 entitlement to work-sharing benefits and shall serve a waiting
16 period of one week.

17 (h) If an eligible employee works in the same week for a
18 work-sharing employer and an employer other than the work-
19 sharing employer, the eligible employee's work-sharing benefits
20 shall be computed in the same manner as if the eligible employee
21 worked solely with the work-sharing employer, except that if the



1 eligible employee is not able to work or is not available for
2 their usual workweek with the work-sharing employer, work-
3 sharing benefits shall not be paid to that eligible employee for
4 that week.

5 (i) An eligible employee who does not work during a week
6 for the work-sharing employer and is otherwise eligible shall be
7 paid the full weekly unemployment compensation amount. That
8 week shall not be counted as a week for which work-sharing
9 benefits were received.

10 (j) An eligible employee who does not work for the work-
11 sharing employer during a week, but works for another employer
12 and is otherwise eligible, shall be paid benefits for that week
13 under the partial unemployment compensation provisions of this
14 chapter. That week shall not be counted as a week for which
15 work-sharing benefits were received.

16 (k) Nothing in this section shall preclude an otherwise
17 eligible employee from receiving total or partial unemployment
18 benefits when the eligible employee's work-sharing benefits have
19 been exhausted.

20 §383-J Benefit charges. Notwithstanding any other
21 provisions of this part to the contrary, work-sharing benefits



1 shall be charged to the account of the work-sharing employer.
2 Employers liable for payments in lieu of contributions shall
3 reimburse the state unemployment compensation fund for the full
4 amount of work-sharing benefits paid to their employees under an
5 approved work-sharing plan.

6 §383-K Extended benefits. An individual who has received
7 all of the unemployment compensation or combined unemployment
8 compensation and work-sharing benefits available in a benefit
9 year shall be considered an exhaustee for purposes of extended
10 benefits, as provided in section 383-168(10), and, if otherwise
11 eligible under that paragraph, shall be eligible to receive
12 extended benefits."

13 SECTION 3. In codifying the new sections added by
14 section 2 of this Act, the revisor of statutes shall substitute
15 appropriate section numbers for the letters used in designating
16 the new sections in this Act.

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

18

INTRODUCED BY:



JAN 22 2021



H.B. NO. 462

Report Title:

Employment Security; Work-sharing Program; Private Sector

Description:

Establishes a work-sharing program for private employers to avoid layoffs of employees and preserve trained workforces during disruptions to regular business activity.

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

