
A BILL FOR AN ACT

RELATED TO WORKER RETENTION.

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

1 SECTION 1. Chapter 394B, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§394B- Divestiture; worker retention. (a) Upon a
5 divestiture of a covered establishment, the successor employer:

6 (1) Shall employ all incumbent non-supervisory and non-
7 confidential employees, except as provided in this
8 section;

9 (2) Shall not require incumbent employees to file
10 employment applications to be hired by the successor
11 employer unless the employee's existing employee file
12 is incomplete;

13 (3) Shall recognize all existing collective bargaining
14 agreements if the number of incumbent employees in the
15 bargaining unit is sufficient to require recognition
16 of the bargaining unit; and



1 (4) Shall not be required to employ all incumbent
2 employees; provided that the business of the successor
3 employer is substantially dissimilar to the former
4 employer's business.

5 (b) For purposes of this section:

6 "Employer" means a person who directly, indirectly, or
7 through an agent or any other person, including through the
8 services of a third-party employer, temporary services, staffing
9 agency, independent contractor, or any similar entity, at any
10 time in the prior twelve months, employs or exercises control
11 over the wages, hours, or working conditions of fifty or more
12 employees at a single business establishment.

13 "Substantially dissimilar" refers to two or more things
14 that are significantly different or divergent in essential
15 characteristics or qualities. "Substantially dissimilar" is
16 often used to indicate a notable contrast or disparity between
17 objects, concepts, or ideas. "Substantially dissimilar" implies
18 that there are substantial discrepancies or variations that set
19 them apart from each other to a significant degree.

20 (c) This section shall not be construed to abrogate the
21 right of an employer to manage the employer's employees.



1 (d) Any employer found in violation of this section shall
2 pay to the dislocated employee the difference between the amount
3 of the employee's wages under the employee's former employer and
4 the unemployment insurance benefits received by the employee for
5 the covered period.

6 (e) The director shall adopt rules in accordance with
7 chapter 91 to carry out the purposes of this section."

8 SECTION 2. In accordance with section 9 of article VII of
9 the Hawaii State Constitution and sections 37-91 and 37-93,
10 Hawaii Revised Statutes, the legislature has determined that the
11 appropriations contained in Act 164, Regular Session of 2023,
12 and this Act will cause the state general fund expenditure
13 ceiling for fiscal year 2024-2025 to be exceeded by
14 \$ or per cent. This current declaration takes
15 into account general fund appropriations authorized for fiscal
16 year 2024-2025 in Act 164, Regular Session of 2023, and this Act
17 only. The reasons for exceeding the general fund expenditure
18 ceiling are that:

19 (1) The appropriation made in this Act is necessary to
20 serve the public interest; and



1 (2) The appropriation made in this Act meets the needs
2 addressed by this Act.

3 SECTION 3. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$ or so
5 much thereof as may be necessary for fiscal year 2024-2025 to
6 effectuate the purpose of this Act.

7 The sum appropriated shall be expended by the department of
8 labor and industrial relations for the purposes of this Act.

9 SECTION 4. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun before its effective date.

12 SECTION 5. New statutory material is underscored.

13 SECTION 6. This Act shall take effect on July 1, 2050.



Report Title:

Dislocated Workers Law; Divestiture; Worker Retention; Penalty;
Expenditure Ceiling; Appropriation

Description:

In an event of a divestiture of a covered establishment,
requires the successor employer to employ incumbent employees
under certain circumstances. Establishes a penalty. Declares
that the general fund expenditure ceiling is exceeded. Makes an
appropriation. Takes effect of 7/1/2050. (SD1)

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not legislation or evidence of legislative intent.*

