
A BILL FOR AN ACT

RELATING TO LABOR.

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

1 SECTION 1. The legislature finds that delivery drivers
2 increasingly perform essential business functions for companies
3 operating in Hawaii, including the transport of packages to
4 consumers. Many of these drivers are required to complete
5 deliveries within specific or algorithmically determined
6 timeframes and are not permitted to refuse assigned delivery
7 requests without penalty, discipline, or loss of access to work.

8 The legislature further finds that these conditions
9 constitute a significant degree of control over the manner and
10 means of work, rendering the classification of such delivery
11 drivers as independent contractors inconsistent with the
12 purposes of Hawaii's employment laws.

13 The purpose of this Act is to clarify the employment status
14 of certain delivery drivers under state laws related to workers'
15 compensation, wage and hour, temporary disability insurance,
16 family leave, tax classification of business relationships, and
17 unemployment insurance by establishing conditions under which



1 delivery drivers are deemed employees of the business operating
2 the delivery program.

3 SECTION 2. Chapter 386, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 "§386- Delivery drivers; covered employment. (a)

7 Notwithstanding any other law to the contrary, for purposes of
8 this chapter, services performed by a delivery driver shall be
9 deemed employment, and the delivery driver shall be deemed an
10 employee of the business that arranges, assigns, or dispatches
11 delivery work, if the delivery driver:

12 (1) Is required to complete deliveries within specified
13 time frames, including time frames established or
14 enforced through algorithmic or automated systems; and

15 (2) Is not permitted, in practice or by policy, to decline
16 assigned delivery requests without incurring
17 penalties, discipline, loss or reduction of
18 compensation, loss of access to work opportunities,
19 deactivation, or any other adverse consequence.

20 Any agreement, policy, or contractual provision that purports to
21 classify a delivery driver described in this section as an



1 independent contractor shall be void and unenforceable for
2 purposes of this chapter.

3 (b) As used in this section, "delivery driver" means an
4 individual who uses a personal vehicle to deliver packages
5 originating from a warehouse, fulfillment center, or
6 distribution station operated by or on behalf of a business to a
7 customer or end user."

8 SECTION 3. Chapter 387, Hawaii Revised Statutes, is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 **"§387- Delivery drivers; covered employment. (a)**
12 Notwithstanding any other law to the contrary, for purposes of
13 this chapter, services performed by a delivery driver shall be
14 deemed employment, and the delivery driver shall be deemed an
15 employee of the business that arranges, assigns, or dispatches
16 delivery work, if the delivery driver:

- 17 (1) Is required to complete deliveries within specified
18 time frames, including time frames established or
19 enforced through algorithmic or automated systems; and
20 (2) Is not permitted, in practice or by policy, to decline
21 assigned delivery requests without incurring



1 penalties, discipline, loss or reduction of
2 compensation, loss of access to work opportunities,
3 deactivation, or any other adverse consequence.

4 Any agreement, policy, or contractual provision that purports to
5 classify a delivery driver described in this section as an
6 independent contractor shall be void and unenforceable for
7 purposes of this chapter.

8 (b) As used in this section, "delivery driver" means an
9 individual who uses a personal vehicle to deliver packages
10 originating from a warehouse, fulfillment center, or
11 distribution station operated by or on behalf of a business to a
12 customer or end user."

13 SECTION 4. Chapter 392, Hawaii Revised Statutes, is
14 amended by adding a new section to be appropriately designated
15 and to read as follows:

16 **"§392- Delivery drivers; covered employment. (a)**
17 Notwithstanding any other law to the contrary, for purposes of
18 this chapter, services performed by a delivery driver shall be
19 deemed employment, and the delivery driver shall be deemed an
20 employee of the business that arranges, assigns, or dispatches
21 delivery work, if the delivery driver:



- 1 (1) Is required to complete deliveries within specified
- 2 time frames, including time frames established or
- 3 enforced through algorithmic or automated systems; and
- 4 (2) Is not permitted, in practice or by policy, to decline
- 5 assigned delivery requests without incurring
- 6 penalties, discipline, loss or reduction of
- 7 compensation, loss of access to work opportunities,
- 8 deactivation, or any other adverse consequence.

9 Any agreement, policy, or contractual provision that purports to
 10 classify a delivery driver described in this section as an
 11 independent contractor shall be void and unenforceable for
 12 purposes of this chapter.

13 (b) As used in this section, "delivery driver" means an
 14 individual who uses a personal vehicle to deliver packages
 15 originating from a warehouse, fulfillment center, or
 16 distribution station operated by or on behalf of a business to a
 17 customer or end user."

18 SECTION 5. Chapter 398, Hawaii Revised Statutes, is
 19 amended by adding a new section to be appropriately designated
 20 and to read as follows:



1 "§398- Delivery drivers; covered employment. (a)

2 Notwithstanding any other law to the contrary, for purposes of
3 this chapter, services performed by a delivery driver shall be
4 deemed employment, and the delivery driver shall be deemed an
5 employee of the business that arranges, assigns, or dispatches
6 delivery work, if the delivery driver:

7 (1) Is required to complete deliveries within specified
8 time frames, including time frames established or
9 enforced through algorithmic or automated systems; and

10 (2) Is not permitted, in practice or by policy, to decline
11 assigned delivery requests without incurring
12 penalties, discipline, loss or reduction of
13 compensation, loss of access to work opportunities,
14 deactivation, or any other adverse consequence.

15 Any agreement, policy, or contractual provision that purports to
16 classify a delivery driver described in this section as an
17 independent contractor shall be void and unenforceable for
18 purposes of this chapter.

19 (b) As used in this section, "delivery driver" means an
20 individual who uses a personal vehicle to deliver packages
21 originating from a warehouse, fulfillment center, or



1 distribution station operated by or on behalf of a business to a
2 customer or end user."

3 SECTION 6. Section 233-1, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§233-1 Certain relationship deemed as that of employer-**
6 **employee.** (a) Whenever a person, firm, corporation, or the
7 like, shall engage or continue in this State in the business of
8 selling tangible personal property, and shall cause such
9 property to be distributed to, by, or through representatives,
10 distributors, dealers, salespersons, peddlers, canvassers,
11 carriers, truckers, or the like, the department of taxation may
12 adopt, in the manner provided by law, one or more rules [~~or~~
13 ~~regulations~~] providing that for the purposes of the tax laws
14 administered by the department the group, class, or category of
15 persons or business described therein (to be determined by the
16 department as may be appropriate for the purposes of the
17 particular rule [~~or regulation~~]) shall, irrespective of whether
18 the relationship or class of business otherwise would be deemed
19 that of seller and buyer, principal and agent, or master and
20 servant, be deemed to be that of employer and employee; provided
21 that [~~no~~]:



1 (1) No rule [~~or regulation~~] adopted under this section
2 shall apply to any group, class, or category of
3 persons or business as to which the department shall
4 determine, or it shall be shown:

5 [~~(1)~~] (A) That the potential employee has been and will
6 continue to be free from control or direction
7 over the performance of the business or services
8 undertaken by the potential employee[~~, and also~~];

9 [~~(2)~~] (B) That the business or services are performed
10 outside of all the places of business of the
11 potential employer[~~;~~]; and [~~also~~]

12 [~~(3)~~] (C) That the potential employee is customarily engaged
13 in an independently established trade,
14 occupation, or business of the same nature as
15 that involved in the business or services in
16 which the potential employee is engaged or which
17 the potential employee has undertaken for, with,
18 or at the behest of the potential employer[~~;~~];
19 and

20 (2) Notwithstanding paragraph (1), services performed by a
21 delivery driver shall be deemed employment, and the



1 delivery driver shall be deemed an employee of the
2 business that arranges, assigns, or dispatches
3 delivery work, if the delivery driver:

4 (A) Is required to complete deliveries within
5 specified time frames, including time frames
6 established or enforced through algorithmic or
7 automated systems; and

8 (B) Is not permitted, in practice or by policy, to
9 decline assigned delivery requests without
10 incurring penalties, discipline, loss or
11 reduction of compensation, loss of access to work
12 opportunities, deactivation, or any other adverse
13 consequence.

14 Any agreement, policy, or contractual provision that
15 purports to classify a delivery driver described in
16 this section as an independent contractor shall be
17 void and unenforceable for purposes of this chapter.

18 (b) As used in [paragraphs (1), (2), and (3) "potential]
19 this section:

20 "Delivery driver" means an individual who uses a personal
21 vehicle to deliver packages originating from a warehouse,



1 fulfillment center, or distribution station operated by or on
2 behalf of a business to a customer or end user.

3 "Potential employee" means the person who by [~~such~~] rule
4 [~~or regulation~~] would be classed as an employee[~~and~~
5 "~~potential~~].

6 "Potential employer" means the person, firm, corporation,
7 or the like, who by [~~such~~] rule [~~or regulation~~] would be classed
8 as the employer."

9 SECTION 7. Section 383-6, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§383-6 Master and servant relationship, not required**

12 **when.** (a) Services performed by an individual for wages or
13 under any contract of hire shall be deemed to be employment
14 subject to this chapter irrespective of whether the common law
15 relationship of master and servant exists unless and until it is
16 shown to the satisfaction of the department of labor and
17 industrial relations that:

- 18 (1) The individual has been and will continue to be free
19 from control or direction over the performance of such
20 service, both under the individual's contract of hire
21 and in fact;



1 (2) The service is either outside the usual course of the
2 business for which the service is performed or that
3 the service is performed outside of all the places of
4 business of the enterprise for which the service is
5 performed; and

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

10 (b) Notwithstanding subsection (a), services performed by
11 a delivery driver shall be deemed employment, and the delivery
12 driver shall be deemed an employee of the business that
13 arranges, assigns, or dispatches delivery work, if the delivery
14 driver:

15 (1) Is required to complete deliveries within specified
16 time frames, including time frames established or
17 enforced through algorithmic or automated systems; and

18 (2) Is not permitted, in practice or by policy, to decline
19 assigned delivery requests without incurring
20 penalties, discipline, loss or reduction of



1 compensation, loss of access to work opportunities,
2 deactivation, or any other adverse consequence.

3 Any agreement, policy, or contractual provision that purports to
4 classify a delivery driver described in this section as an
5 independent contractor shall be void and unenforceable for
6 purposes of this chapter.

7 (c) As used in this section, "delivery driver" means an
8 individual who uses a personal vehicle to deliver packages
9 originating from a warehouse, fulfillment center, or
10 distribution station operated by or on behalf of a business to a
11 customer or end user."

12 SECTION 8. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 9. This Act shall take effect on July 1, 3000.



Report Title:

Employment Classification; Delivery Drivers; Covered Employment

Description:

Clarifies the employment status of certain delivery drivers under state laws related to workers' compensation, wage and hour, temporary disability insurance, family leave, tax classification of business relationships, and unemployment insurance by establishing conditions under which delivery drivers are deemed employees of the business operating the delivery program. Effective 7/1/3000. (HD1)

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