

ACT 20

H.B. NO. 2173-82

A Bill for an Act Relating to Employment Security.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 383-30, Hawaii Revised Statutes, is amended to read:

“§383-30 Disqualification for benefits. An individual shall be disqualified for benefits:

- (1) Voluntary separation. For any week in which he has left his work voluntarily without good cause, and continuing until he has, subsequent to the week in which the voluntary separation occurred, been employed for at least five consecutive weeks of employment. For the purposes of this [subsection] paragraph, “weeks of employment” means all those weeks within each of which the individual has performed services in employment for not less than two days or four hours per week, for one or

more employers, whether or not such employers are subject to this chapter.

- (2) Discharge or suspension for misconduct. For the week in which he has been discharged for misconduct connected with his work, and continuing until he has, subsequent to the week in which the discharge occurred, been employed for at least five consecutive weeks of employment. For the week in which he has been suspended for misconduct connected with his work and for not less than one or more than four consecutive weeks of unemployment which immediately follow such week, as determined in each case in accordance with the seriousness of the misconduct. For the purposes of this paragraph, "weeks of employment" means all those weeks within each of which the individual has performed services in employment for not less than two days or four hours per week, for one or more employers, whether or not such employers are subject to this chapter.
- (3) Failure to apply for work, etc. For the week in which he failed, without good cause, either to apply for available, suitable work when so directed by the employment office or any duly authorized representative of the department of labor and industrial relations, or to accept suitable work when offered him and continuing until he has, subsequent to the week in which the failure occurred, been employed for at least five consecutive weeks of employment. For the purposes of this [subsection] paragraph, "weeks of employment" means all those weeks within each of which the individual has performed services in employment for not less than two days or four hours per week, for one or more employers, whether or not such employers are subject to this chapter.
 - (A) In determining whether or not any work is suitable for an individual there shall be considered among other factors and in addition to those enumerated in paragraph (3)(B) of this section, the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, the length of his unemployment, his prospects for obtaining work in his customary occupation, the distance of available work from his residence and prospects for obtaining local work. The same factors so far as applicable shall be considered in determining the existence of good cause for an individual's voluntarily leaving his work under paragraph (1) of this section.
 - (B) Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:
 - (i) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
 - (ii) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
 - (iii) If as a condition of being employed the individual would be

- required to join a company union or to resign from or refrain from joining any bona fide labor organization.
- (4) Labor dispute. For any week with respect to which it is found that his unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment or other premises at which he is or was last employed; provided that this paragraph shall not apply if it is shown that:
 - (A) He is not participating in or directly interested in the labor dispute which caused the stoppage of work; and
 - (B) He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or directly interested in the dispute; provided that, if in any case separate branches of work, which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department shall, for the purpose of this [subsection] paragraph, be deemed to be a separate factory, establishment or other premises.
 - (5) If the department finds that he has within the twenty-four calendar months immediately preceding any week of his unemployment made a false statement or representation of a material fact knowing it to be false or knowingly failed to disclose a material fact to obtain any benefits not due under this chapter, he shall be disqualified for benefits beginning with the week in which the department makes the determination and for each consecutive week during the current and subsequent twenty-four calendar months immediately following such determination, and such individual shall not be entitled to any benefit under this chapter for the duration of such period; provided, that no disqualification shall be imposed if proceedings have been undertaken against the individual under section 383-141.
 - (6) Other unemployment benefits. For any week or part of a week with respect to which he has received or is seeking unemployment benefits under any other employment security law, [except the agricultural unemployment compensation law, chapter 384,] but this paragraph shall not apply (A) if the appropriate agency finally determines that he is not entitled to benefits under such other law, or (B) if benefits are payable to him under an act of Congress which has as its purpose the supplementation of unemployment benefits under a state law.
 - (7) Deleted."

SECTION 2. Section 383-77, Hawaii Revised Statutes, is amended to read:

"§383-77 Employers' coverage, election. Any employing unit, for which services that do not constitute employment as defined in this chapter are performed, may file with the department of labor and industrial relations a written election that all such services performed with respect to which payments are not

required under an employment security law of any other state or of the federal government, and which are performed by individuals in its employ in one or more distinct establishments or places of business, shall be deemed to constitute employment by an employer for all of the purposes of this chapter for not less than two calendar years.

Upon the written approval of the election by the department, the services shall be deemed to constitute employment subject to this chapter from the first day of the calendar quarter in which the approval is granted. The services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such two calendar years, only if at least thirty days prior to such first day of January the employing unit has filed with the department a written notice to that effect.

[In addition to the election permitted under the preceding paragraph, any employing unit, for which services constituting employment as defined in the agricultural unemployment compensation law, chapter 384, are performed, or will be performed subsequent to its effective date, may at any time before or after its effective date, file with the department a written election setting forth the date on and after which the employing unit desires that all such services shall be deemed to constitute employment by it for all purposes of this chapter, provided that the designated date is January 1 or July 1 of a calendar year. The written election under this paragraph shall not be revocable after it has been filed with the department. From and after the date designated in the written election by the employing unit as the date on and after which the employing unit desires that the services constituting employment as defined in the agricultural unemployment compensation law shall be deemed to constitute employment subject to this chapter, such services shall constitute employment by it for all purposes of this chapter. Between the date that the written election is filed with the department and the date that the employing unit desires that the services constitute employment for all of the purposes of this chapter, the employing unit may make voluntary contributions in such amounts and at such times as the employing unit may determine to do so in anticipation of its ultimate obligations for contributions under this chapter with respect to such employment. If an employing unit has a liability for unpaid contributions or unpaid benefits under the agricultural unemployment compensation law, this paragraph shall not be availed of by the employing unit unless the department is satisfied of such employing unit's solvency and financial ability to discharge such liability.]

SECTION 3. Section 383-78, Hawaii Revised Statutes, is repealed.

SECTION 4. Chapter 384, Hawaii Revised Statutes, is repealed.

SECTION 5. Section 385-2, Hawaii Revised Statutes, is amended to read:
"§385-2 Definitions, generally. As used in this chapter, unless the context clearly requires otherwise:

- (1) "Director" means the director of labor and industrial relations of the State.
- (2) "Fund" means the additional unemployment compensation fund established by this chapter.
- (3) "Unemployment". An individual shall be deemed "unemployed" in any

week during which he performs no services and with respect to which no wages are receivable by him, or in any week of less than full-time work if the wages receivable by him with respect to such week are less than his weekly benefit amount payable under this chapter.

- (4) "Additional unemployment benefits" means the unemployment compensation benefits payable under this chapter.
- (5) "Normal benefits" means the unemployment compensation benefits payable pursuant to [chapters] chapter 383 [or¹ 384].
- (6) "Claimant" means an individual:
 - (A) Who has an unexpired benefit year and has exhausted his normal benefits; or
 - (B) Whose benefit year expired, or whose normal benefits were exhausted, within a period of twenty-six consecutive weeks immediately preceding the week in which the proclamation provided for in section 385-1 became effective; or
 - (C) Who was employed during the week in which the governor's proclamation pursuant to section 385-1 became effective, but who became unemployed and whose total earned wages are insufficient to entitle him to normal benefits; or
 - (D) Whose unemployment was proximately caused by the disaster identified by the governor in the proclamation provided for in section 385-1 and was self-employed during the week in which the disaster occurred.
- (7) "Wages" means all remuneration for services from whatever source, including commissions and bonuses, and remuneration from self-employment, and the cash value of all remuneration in any medium other than cash, but not including tips or gratuities paid directly to an individual by a customer of his employer and not accounted for by the individual to his employer. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the director. For the purposes of this chapter "wages" does not include the amount of payment or remuneration set forth in section 383-11.
- (8) "Week" means any period of seven consecutive days as the director may by regulation prescribe.
- (9) "Benefit year" refers to "benefit year" as that term is defined in section 383-1(3)."

SECTION 6. Section 385-6, Hawaii Revised Statutes, is amended to read:

"§385-6 Requirements for eligibility. An unemployed claimant is eligible to receive additional unemployment benefits with respect to any week only if the director of labor and industrial relations finds that:

- (1) He has made a claim for additional unemployment benefits with respect to such week in accordance with the regulations as the director may prescribe with respect to claims for normal benefits;
- (2) He meets the eligibility requirements of paragraphs (2) and (3) of section 383-29 [, or chapter 384];

- (3) He is not subject to disqualification and is not under disqualification for normal benefits under section 383-30;
- (4) He is not entitled to receive unemployment compensation benefits under any state or federal unemployment compensation laws for the week in which he claims for additional unemployment benefits [.]
- (5) He is not entitled to receive disaster benefits under any state or federal law for the week in which he claims additional unemployment benefits.”

SECTION 7. Statutory material to be repealed is bracketed. New material is underscored.²

SECTION 8. This Act shall take effect upon its approval.

(Approved April 23, 1982.)

Notes

- 1. Prior to amendment, “and” appeared instead of “or”.
- 2. The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.