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H.B. NO. 2008-86

A Bill for an Act Relating to Employment Security.

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

SECTION 1. Section 383-1, Hawaii Revised Statutes, is amended by amending the definition of “base period” to read as follows:

- “(1) “Base period,” with respect to benefit years beginning after June 30, 1951, means the four completed calendar quarters immediately preceding the first day of an individual’s benefit year. With respect

to benefit years beginning on and after October 1, 1989, the base period means the first four of the last five completed calendar quarters preceding the first day of an individual's benefit year."

SECTION 2. Section 383-29, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) An unemployed individual shall be eligible to receive benefits with respect to any week only if the department of labor and industrial relations finds that:

- (1) Claim. He has made a claim for benefits with respect to such week in accordance with such [regulations] rules as the department may prescribe.
- (2) Registration. He has registered for work at, and thereafter continued to report at, an employment office in accordance with such [regulations] rules as the department may prescribe, except that the department may, by [regulation] rule, waive or alter either or both of the requirements of this paragraph as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purpose of this chapter; provided that no such [regulation] rule shall conflict with section 383-21.
- (3) Availability. He is able to work and is available for work; provided that no claimant shall be considered ineligible with respect to any week of unemployment for failure to comply with this paragraph if such failure is due to an illness or disability, as evidenced by a physician's certificate, which occurs during an uninterrupted period of unemployment with respect to which benefits are claimed and no work which would have been suitable prior to the beginning of such illness and disability has been offered the claimant.
- (4) Waiting period. He has been unemployed for a waiting period of one week within his benefit year. No week shall be counted as a waiting period:
 - (A) If benefits have been paid with respect thereto;
 - (B) Unless the individual was eligible for benefits with respect thereto as provided in this section and section 383-30, except for the requirements of this paragraph.
- (5) Wages for insured work; weeks of employment.
 - (A) In the case of an individual who has established a benefit year prior to January 3, 1965, he has been paid wages for insured work during his base period in an amount equal to at least the amount appearing in column C of the schedule in section 383-22 on the line on which, in column B of the schedule, appears his weekly benefit amount.
 - (B) In the case of an individual who has established a benefit year after January 2, 1965, but prior to January 2, 1966, he has had during his base period a total of fourteen or more weeks of employment as defined in section 383-1(19) and has been paid wages for insured work during his base period in an amount equal to at least the amount appearing in column C of the schedule in section 383-22 on the line on which in column B of the schedule, appears his weekly benefit amount.

- (C) In the case of an individual whose benefit year begins on or after January 2, 1966, but prior to October 1, 1989, he has had during his base period a total of fourteen or more weeks of employment as defined in section 383-1(19) and has been paid wages for insured work during his base period in an amount equal to at least thirty times his weekly benefit amount as determined under section 383-22(b). For the purposes of this subparagraph, wages for insured work shall include wages paid for services:
- (i) Which were not employment, as defined in section 383-2 or pursuant to an election under section 383-77 prior to January 1, 1978, at any time during the one-year period ending December 31, 1975; and
 - (ii) Which are agricultural labor as defined in section 383-9 except such service excluded under section 383-7(1), or are domestic service except such service excluded under section 383-7(2); except to the extent that assistance under title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services.
- (D) In the case of an individual whose benefit year begins on and after October 1, 1989, the individual has been employed as defined in section 383-2 and has been paid wages for such insured work during the individual's base period in an amount equal to not less than thirty times the individual's weekly benefit amount, as determined under section 383-22(b), and the individual has been paid wages for insured work during at least two quarters of the individual's base period.
- (D) (E) For the purposes of this paragraph, wages and weeks of employment shall be counted for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the dates on which the employing unit by which such wages or other remuneration as provided in section 383-1(19) were paid has satisfied the conditions of section 383-1(9) with respect to becoming an employer."

SECTION 3. Section 383-30, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) Voluntary separation. For any week prior to October 1, 1989, 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 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. For any week beginning on and after October 1, 1989, in which the individual has left the individual's work voluntarily without good cause, and continuing until he has, subsequent to the week in which the voluntary separation occurred, been paid wages

- in covered employment equal to not less than five times the individual's weekly benefit amount as determined under section 383-22(b).
- (2) Discharge or suspension for misconduct. For [the week] any week prior to October 1, 1989, 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. For any week beginning on and after October 1, 1989, in which the individual has been discharged for misconduct connected with work, and until the individual has, subsequent to the week in which the discharge occurred, been paid wages in covered employment equal to not less than five times the individual's weekly benefit amount as determined under section 383-22(b).
- (3) Failure to apply for work, etc. For [the week] any week prior to October 1, 1989, 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 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. For any week beginning on and after October 1, 1989, in which the individual 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 until the individual has, subsequent to the week in which the failure occurred, been paid wages in covered employment equal to not less than five times the individual's weekly benefit amount as determined under section 383-22(b).
- (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 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, 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 4. Section 383-70, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Each employer shall make at the time and in the manner prescribed by the department a full, true, and correct report with respect to the wages paid by him, which report shall contain other information as may be prescribed by the department. For each calendar quarter beginning July 1, 1988, such report shall include wage information for each employee in accordance with such rules as the department may prescribe. The report shall be made by the employer even though he is not required to pay contributions.”

SECTION 5. Section 383-94, Hawaii Revised Statutes, is amended to read as follows:

“§383-94 Records and reports. (a) Each employing unit shall keep true and accurate work records, for such periods of time and containing such information as the department of labor and industrial relations may prescribe. The records shall be open to inspection and be subject to being copied by the authorized representatives of the department at any reasonable time and as often as may be necessary. Any authorized representative of the department, or the referee, may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which such authorized representative, or the referee, deems necessary for the effective administration of this chapter.

(b) Each employer shall report all new employees hired subject to procedures prescribed by the department, within five working days after the first day of employment of such individual. [Each employer shall report separation of any employee and the wages paid to such employee within five working days after the last day of employment.] If any employer fails to report with respect to a newly hired employee within five working days after the first day of employment, the employer shall pay a penalty in the amount of \$10.

(c) Prior to July 1, 1988, each employer shall report separation of any employee and the wages paid to such employee within five working days after the last day of employment, in the manner prescribed by the department. If any employer fails to report with respect to [a newly hired employee within five working days after the first day of employment, or] the separation of an individual or the remuneration which he paid to the individual within five working days after termination of the individual or after mailing of notice from the department [by registered or certified mail] so to do, he shall pay a penalty in the amount of \$10. [The penalty shall be assessed, collected, and paid into the fund in the same manner as contributions. The director may, in a case of excusable failure to file the report within the required time, remit the penalty.] Beginning on and after July 1, 1988, each employer shall report the separation of any employee or the wages paid to such employee, or both, upon request of the department within five calendar days from the date that such request was mailed to the employer. If any employer fails to report with respect to the separation of an individual, or the remuneration which the employer paid to the individual, or both, within five calendar days after mailing of notice from the department, the employer shall pay a penalty in the amount of \$10.

(d) For each calendar quarter beginning July 1, 1988, each employer or employing unit as defined in section 383-1 shall furnish the department with wage information for each employee in accordance with such rules as the department of labor and industrial relations may prescribe. Such quarterly wage report shall be filed with the department on or before the last day of the month

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succeeding the last month of each quarter. Any employer who fails to file a report of wages paid to each of the employer's employees for any period in the manner and within the time prescribed by this chapter and the rules of the department, or any employer who the department finds has filed an insufficient report shall pay a penalty in the amount of \$30.

(e) Penalties shall be assessed, collected, and paid into the fund in the same manner as contributions. The director, in a case of excusable failure to file any report under this section within the required time, may remit the penalty."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved April 15, 1986.)