

ACT 377

H.B. NO. 445

A Bill for an Act Relating to Dislocated Workers.

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

SECTION 1. Section 394B-1, Hawaii Revised Statutes, is amended to read as follows:

“[§394B-1] Findings and purpose. The legislature finds that there is a need for employment and training assistance for dislocated workers in Hawaii[.] and that there is a need to protect employees from the effects of unexpected and sudden lay-offs or terminations resulting from closings, plant closures, partial plant closures, and relocations.”

SECTION 2. Section 394B-2, Hawaii Revised Statutes, is amended to read as follows:

“§394B-2¹ Definitions. As used in this chapter:

“Closing” means the permanent shutting down of all operations within a covered establishment due to the sale, transfer, merger, and other business takeover or transaction of business interests which results in or may result in the lay-off or termination of employees of a covered establishment by the employer.

“Covered establishment” means any industrial, commercial, or other business entity which employs at any time in the preceding twelve-month period, fifty or more persons.

“Department” means the department of labor and industrial relations.

“Director” means the director of labor and industrial relations.

“Dislocated worker” means an individual who:

- (1) Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment compensation, and is

unlikely to return to the person's previous industry or occupation; or

- (2) Has been terminated or who has received a notice of termination of employment, as a result of any permanent closure of a business, partial closings, and relocation as defined in this section; or
- (3) Is a long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including any older individual who may have substantial barriers to employment by reason of age.

"Employee" means any individual engaged in service to an employer.

"Employer" means any person who, directly or indirectly, owns, operates or has a controlling interest in a covered establishment, excluding the state or any political subdivision thereof.

"Partial closing" means the permanent shutting down of a portion of operations within a covered establishment due to the sale, transfer, merger, and other business takeover or transaction of business interests and results in or may result in the termination of a portion of the employees of a covered establishment by the employer.

"Person" means one or more individuals, partnerships, associations, corporations, business trust, legal representatives, or any organized group of persons.

"Relocation" means the removal of all or substantially all of the industrial¹ commercial or business operations in a covered establishment to a location outside the state of Hawaii."

SECTION 3. Chapter 394B, Hawaii Revised Statutes, is amended by adding the following new sections to be appropriately designated and to read as follows:

"§394B- Notification. An employer in a covered establishment shall provide to each employee and the director written notification of a closing, partial closing, or relocation at least forty-five days prior to its occurrence.

§394B- Dislocated worker allowance. (a) Whenever a closing, partial closing, or relocation occurs, the employer shall provide each affected employee who applies for and is found eligible for unemployment compensation benefits for a particular week under chapter 383 and based in whole or in part upon employment in the closed, partial closed, or relocated plant a payment, denominated a dislocated worker allowance as a supplement to any unemployment compensation benefit received for that week.

(b) The amount of such weekly payment shall be the difference between the employee's average weekly wages (including any payments for periods of compensated leave) prior to the closing (partial closing or relocation) and the weekly unemployment compensation benefits received.

(c) For any one closing, partial closing, or relocation, an otherwise eligible employee ceases to be eligible for a dislocated worker allowance once he or she has received such an allowance from the covered employer for a total of four weeks.

(d) Receipt of a dislocated employee allowance shall not affect an employee's eligibility for unemployment compensation benefits for any week, or the amount of such benefits.

(e) The director of labor and industrial relations may adopt, amend, or repeal such rules and regulations as the director deems necessary or suitable for the administrations of this chapter. The rules and regulations

ACT 377

when prescribed in accordance with chapter 91 shall have the force and effect of law and shall be enforced in the same manner as this chapter.

(f) Notwithstanding the provisions of this section, any contractual agreement arrived at through a collective bargaining process that results in providing supplemental unemployment compensation benefits for an affected employee shall supersede, with respect to that employee, the requirements of this section.

§394B- Prompt payment of wages and benefits. An employer in a covered establishment shall pay on the effective date of a closing, partial closing, or relocation to each employee all wages, benefits, and other forms of compensation due and owing to said employee.

§394B- Civil penalties. Any employer who fails to conform to the provisions of this chapter shall be liable to each of the employees affected in an amount equal to the value of all their wages, benefits, and other compensation for the three months preceding the closure, partial closure, or relocation of the covered establishment.

§394B- Employees remedies. (a) An action by an employee to enforce the provisions of this chapter may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of oneself or themselves, or the employee or employees may designate an agent or representative to maintain the action.

(b) The court in any action brought under this section shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs of action, including costs of fees of any nature, and reasonable attorney's fees, to be paid by the defendant.

(c) The court may also provide injunctive relief in appropriate circumstances."

SECTION 4. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid application or provision, and to this end the provisions of this part are severable.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 6. This Act shall take effect upon approval.

(Approved July 7, 1987.)

Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.