

A Bill for an Act Relating to Employment Security.

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

SECTION 1. The legislature finds that the recent collapse of national credit, housing, financial, and other markets has had severe consequences on the local economy, resulting in significant losses to employment. The Honolulu Star-Bulletin reports that in December of 2008, the state unemployment rate rose to 5.5 per cent – the highest in almost ten years. By January of 2009, the department of labor and industrial relations was receiving approximately three thousand new unemployment claims per week, which is more than double the number of new claims filed during the same period in 2008. Unfortunately, the economic outlook remains grim. In March of 2009, the Honolulu Star-Bulletin reported that the unemployment numbers continue to rise, with Hawaii's unemployment rate climbing to 6.1 per cent in January of this year – the highest unemployment numbers in twenty-five years.

The legislature finds that the current employment situation in Hawaii compels immediate action by the State, working in partnership with businesses, to provide an alternative to the complete layoff of workers, that would mutually benefit employers and employees. The State currently implements a partial unemployment program through rules implemented by the department of labor and industrial relations. Partial unemployment allows employers to retain their full-time workers by reducing workers' hours, while allowing the employees to collect unemployment benefits and maintain certain benefits for up to four weeks of partial unemployment.

The purpose of this Act is:

- (1) To clarify and temporarily codify implementation of the partial unemployment system; and
- (2) To extend the duration of employees' eligibility for unemployment benefits under partial unemployment from four weeks to eight weeks.

SECTION 2. Chapter 383, Hawaii Revised Statutes, is amended by adding four new sections to part II to be appropriately designated and to read as follows:

**“§383-A Partial unemployment; eligibility.** A new claim or an initial additional claim for partial unemployment benefits may be filed as the department prescribes for any week only if the individual:

- (1) Is a full-time worker;
- (2) Is attached to a regular employer, as defined in section 383-1;
- (3) Worked less than or did not work the individual's normal, customary full-time hours, as defined in section 383-1, for that week;
- (4) Had no earnings or earned less than the individual's weekly benefit amount for that week; and
- (5) Was unemployed due to a lack of full-time work, as defined in section 383-1, for that week.

**§383-B Partial unemployment; claim filing requirements, determinations.**

(a) Claims for partial unemployment shall be filed according to section 383-32. For partially unemployed individuals, a new claim may be taken within twenty-eight days from the week-ending date of the first week of partial unemployment

for which the claim is filed; provided that an individual shall not be required to file a claim earlier than two weeks from the date wages are paid for the claim period.

(b) Continued claim certifications for partial benefits shall be filed as follows:

- (1) An individual may file a continued claim certification for partial unemployment benefits in person, by mail, by telephone, or by using other alternative claim filing procedures as instructed or authorized by the department and in the manner prescribed by the department with respect to each week of the individual's partial unemployment. A continued claim certification shall be filed in the same manner as prescribed in rules of the department for continued claim certifications for total or part-total unemployment benefits and not later than twenty-eight days from the end of the week for which the individual claims benefits; provided that an individual shall not be required to file a continued claim certification earlier than two weeks from the date wages are paid for a claim period.
- (2) If, after a week of partial unemployment, eight or fewer consecutive weeks of total unemployment follow the week of partial unemployment, the weeks of total unemployment may be deemed weeks of partial unemployment. However, if total unemployment extends beyond eight consecutive weeks, the individual shall be deemed totally unemployed.
- (3) Notwithstanding paragraph (2), the department may extend partial unemployment beyond eight consecutive weeks of total unemployment under conditions including but not limited to:
  - (A) The individual is retained in an employer-employee relationship;
  - (B) The individual is under obligation to reserve services for the employer; and
  - (C) The individual has a definite or reasonably imminent return to work date.

**§383-C Partial unemployment; waivers.** (a) The registration for work requirements under section 383-29(a) may be waived for individuals who are partially unemployed, as defined in section 383-1.

(b) An individual may be exempted from the work search requirements as determined by rules of the department, or be subject to modified work search requirements as authorized by the department if the individual is waived from the registration for work requirements, as defined in section 383-1.

**§383-D Partial unemployment; reporting requirements.** (a) An employer to whom a claimant for partial unemployment is still attached shall submit verification of earnings and satisfy all low earnings reporting requirements in subsection (b) and rules of the department for each week that the claimant certifies for partial unemployment benefits.

(b) Low earnings reports shall be submitted as follows:

- (1) Whenever, during any weekly pay period in an individual's benefit year, an individual has worked less than full-time hours for the regular employer to which the individual is attached, and the individual's earnings are less than the individual's current weekly benefit amount, the individual's employer, upon request by the department shall:

- (A) Enter the individual's name, social security account number, gross earnings, week-ending date, and the reasons for the individual's reduced work week on a form provided or approved by the department and return the form to the unemployment insurance office as instructed within five working days after the notice of an individual's benefit amount has been mailed to the employer as to all prior weeks for which benefits are claimed. Thereafter, during the benefit year, the employer shall report within five working days after the end of each week or weekly pay period for which the low earnings reports are required; or
  - (B) Furnish the individual personally with the information on a form provided or approved by the department and the individual shall be responsible to submit the report to the unemployment insurance office within five working days after the end of each week or weekly pay period or as instructed by the department.
- (2) If the employer or individual fails to submit the low earnings report as prescribed in paragraph (1)(A) or (B) within the time specified by the department, the department shall determine the individual's eligibility for any week's benefits claimed based on the individual's certification of employment and earnings."

SECTION 3. Section 383-1, Hawaii Revised Statutes, is amended by adding four new definitions to be appropriately inserted and to read as follows:

"Attached to a regular employer" means:

- (1) The employee is being offered work each week by the employee's regular employer; or
- (2) If no work is being offered:
  - (A) The employer is maintaining the individual on the payroll by paying for a medical insurance plan or by maintaining the employee's sick leave or vacation credits; or
  - (B) There is a definite return to work date with the same employer within eight weeks.

"Full-time hours" or "full-time work" means a forty-hour work week unless regarded otherwise according to the standard practice, custom, or agreement in a particular trade, occupation, or business.

"Partial unemployment" or "partially unemployed" means the unemployment of any individual who, during a particular week, was still attached to that individual's regular employer, had no earnings or earned less than that individual's weekly benefit amount, and who worked less than or did not work that individual's normal, customary full-time hours for the individual's regular employer because of a lack of full-time work.

"Registered for work" or "registration for work" means that an individual shall provide information to the employment office to be posted on the department's internet job-matching system, including but not limited to the individual's name, job skills, education, training, prior employment history and work duties, preferred working conditions, occupational licenses, and other relevant occupational information to facilitate work search efforts by the individual and increase job referrals by the employment office. The information shall be posted with the department's assistance or independently by the individual. The employment office shall provide the necessary information to the unemployment office for purposes of determining that the individual's registration for work requirements has been met."

SECTION 4. 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 finds that:

- (1) The individual has made a claim for benefits with respect to that week in accordance with rules the department may prescribe~~;~~ and with section 383-B for partially unemployed individuals;
- (2) The individual has registered for work [at,] as defined in section 383-1, and thereafter continued to report, at,] an employment office in accordance with rules the department may prescribe, except that the department, by rule, may waive or alter either or both of the requirements of this paragraph [as to] for partially unemployed individuals pursuant to section 383-C, individuals attached to regular jobs, and [as to] other types of cases or situations with respect to which it finds that compliance with those requirements would be oppressive, or would be inconsistent with the purpose of this chapter; provided that no [such] rule shall conflict with section 383-21;
- (3) The individual 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 the 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 the illness and disability has been offered the claimant;
- (4) The individual has been unemployed for a waiting period of one week within the individual's 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) In the case of an individual whose benefit year begins:
  - (A) On or after January 2, 1966, but prior to October 1, 1989, the individual has had during the individual's base period a total of fourteen or more weeks of employment, as defined in section 383-1, and has been paid wages for insured work during the individual's base period in an amount equal to at least thirty times the individual's 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 service excluded under section 383-7(1), or are domestic service except 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 those services;
  - (B) On and after October 1, 1989, to January 4, 1992, the individual has been employed, as defined in section 383-2, and

has been paid wages for 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; provided that no otherwise eligible individual who established a prior benefit year under this chapter or the unemployment compensation law of any other state, shall be eligible to receive benefits in a succeeding benefit year until, during the period following the beginning of the prior benefit year, that individual worked in covered employment for which wages were paid in an amount equal to at least five times the weekly benefit amount established for that individual in the succeeding benefit year; and

- (C) After January 4, 1992, 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 twenty-six 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; provided that no otherwise eligible individual who established a prior benefit year under this chapter or the unemployment compensation law of any other state, shall be eligible to receive benefits in a succeeding benefit year until, during the period following the beginning of the prior benefit year, that individual worked in covered employment for which wages were paid in an amount equal to at least five times the weekly benefit amount established for that individual in the succeeding benefit year.

For purposes of this paragraph, wages and weeks of employment shall be counted for benefit purposes with respect to any benefit year only if the benefit year begins subsequent to the dates on which the employing unit by which the wages or other remuneration, as provided in the definition of weeks of employment in section 383-1, were paid has satisfied the conditions of section 383-1 with respect to becoming an employer.

Effective for benefit years beginning January 1, 2004, and thereafter, if an individual fails to establish a valid claim for unemployment insurance benefits under this paragraph, the department shall make a redetermination of entitlement based upon the alternative base period, as defined in section 383-1; provided further that the individual shall satisfy the conditions of section 383-29(a) (5) that apply to claims filed using the base period, as defined in section 383-1, and the establishment of claims using the alternative base period shall be subject to the terms and conditions of sections 383-33 and 383-94; and

- (6) Effective November 24, 1994, an individual who has been referred to reemployment services pursuant to the profiling system under section 383-92.5 ~~[participates]~~ shall participate in those services or in similar services. The individual may not be required to participate in reemployment services if the department determines the individual has completed those services, or there is justifiable cause for the claimant's failure to participate in those services.

For the purposes of this subsection, employment and wages used to establish a benefit year shall not thereafter be reused to establish another benefit year.”

SECTION 5. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect on July 1, 2009, and shall be repealed on July 1, 2012; provided that on July 1, 2012, sections 383-1 and 383-29(a), Hawaii Revised Statutes, shall be reenacted in the same form in which they read on June 30, 2009.

(Approved July 2, 2009.)

**Note**

1. Edited pursuant to HRS §23G-16.5.