

HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 6

OFFICE OF EMPLOYMENT AND TRAINING ADMINISTRATION

CHAPTER 506

PLANT CLOSING NOTIFICATION AND DISLOCATED
WORKER ALLOWANCE

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§12-506-1 Scope and purpose. (a) This chapter implements Act 377, SLH 1987, which amends chapter 394B, HRS, relating to dislocated workers.

(b) Chapter 394B, HRS, protects employees from the effects of unexpected and sudden lay-offs or terminations which result from closings, partial closings, or relocations due to the sale, transfer, merger, and other business takeover or transaction of business interests.

(c) Chapter 394B, HRS, provides that affected employees are to receive advance notice and a limited dislocated worker allowance to give them an opportunity to adjust their lives in an orderly manner, as well as to receive retraining or other reemployment assistance from the department. However, where an affected employee is eligible under a collective bargaining agreement for supplemental unemployment compensation benefits, the employee is exempted from receiving the dislocated worker allowance. [Eff: 8/15/88] (Auth: HRS §394B-10) (Imp: HRS §§394B-1, 394B-9, 394B-10)

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§12-506-2 Definitions. As used in chapter 394B, HRS, and in this chapter, unless the context clearly indicates otherwise:

"Affected employee" is any individual engaged in service to an employer and who has a reasonable expectation of continuing employment with that employer at the time of the closing, partial closing, or relocation.

"Average weekly wages" means a figure equal to the total wages paid to an employee of the employer affected by a closing, partial closing, or relocation, divided by the number of weeks, not to exceed 52 weeks prior to the closing, partial closing, or relocation, that the employee actually worked or was on compensated leave with that employer.

"Closing" shall be as defined in section 394B-2, HRS.

"Compensated leave" means authorized absence while the employee is being paid wages, such as sick leave, holiday leave, and vacation leave; but excluding unpaid absences from work, and absences from work while receiving payments, such as workers' compensation, temporary disability insurance, and long-term disability insurance.

"Covered establishment" shall be as defined in section 394B-2, HRS.

"Department" shall be as defined in section 394B-2, HRS.

"Director" shall be as defined in section 394B-2, HRS.

"Dislocated worker" shall be as defined in section 394B-2, HRS.

"Employee" shall be as defined in section 394B-2, HRS.

"Employer" shall be as defined in section 394B-2, HRS.

"Partial closing" shall be as defined in section 394B-2, HRS.

"Permanent shutting down" means the cessation of a portion or all of the business activities in a covered establishment which results in a lay-off or termination of employees. If the covered establishment or portion thereof continues operations with a different owner or different employees, the act of a lay-off or termination of employees constitutes a permanent shutting down.

"Person" shall be as defined in section 394B-2, HRS.

"Portion of operations" for the purposes of a partial closing means a distinct part of the operations, such as a department, division, branch, or outlet.

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"Portion of the employees" for the purposes of a partial closing means one or more employees employed in that portion of the operations.

"Relocation" shall be as defined in section 394B-2, HRS.

"Sale, transfer, merger, and other business takeover or transaction of business interests" means any of the various forms of business transactions where there is a change in the controlling interest of a covered establishment, or the sale, transfer, or merger of a portion of the operations of a covered establishment.

"Transaction of business interests," as used in this context, refers to transactions similar to sales, transfers, mergers, and other business takeovers.

Examples:

Employer A is a construction company which employs 100 workers on a construction project. When the project is completed, all 100 workers are laid off. For purposes of the definition, no sale, transfer, merger, and other business takeover or transaction of business interests has taken place.

Employer B is a retail store employing 200 workers. The employer hires an additional 50 temporary workers for the Christmas shopping period. All 50 temporary workers are laid off after the Christmas shopping season. For purposes of the definition, no sale, transfer, merger, and other business takeover or transaction of business interests has taken place.

"Supplemental unemployment compensation benefits" means any remuneration or benefit, such as severance pay, that are given upon the employee's termination from employment.

"Wages" means all remuneration for services constituting employment. It includes the market value of board, lodging, fuel, and other advantages having a cash value which the employer has paid as a part of the employee's remuneration and gratuities received in the course of employment from others than the employer to the

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extent that they are customary and expected in that type of employment or accounted for by the employee to the employer. [Eff: 8/15/88] (Auth: HRS §394-B-10) (Imp: HRS §394B-2)

§12-506-3 Covered establishment. (a) In order to be considered a covered establishment, an entity shall:

- (1) Be an industrial, commercial, or other legal business entity which is a party to a sale, transfer, merger, and other business takeover or transaction of business interests as defined herein; and
- (2) Employ at any time in the preceding twelve-month period, fifty or more persons in the State or Hawaii as determined by any payroll or other reasonable accounting period within the twelve consecutive calendar months preceding the closing, partial closing, or relocation.

[Eff: 8/15/88] (Auth: HRS §394B-10) (Imp: HRS §394B-2)

§12-506-4 Closing. (a) In order for there to be a

closing, there shall be:

- (1) A sale, transfer, merger, and other business takeover or transaction of business interests;
 - (2) A permanent shutting down of all operations within a covered establishment due to paragraph (1); and
 - (3) An actual or potential lay-off or termination of employees of a covered establishment by the employer as a result of paragraph (2).
- (b) Business shutdowns which occur as a direct result of or in connection with factors such as business failure, bankruptcy, or loss of lease or contract are not considered closings for the purposes of chapter 394B, HRS.

Examples:

Employer A employs 100 employees but suffers financial setbacks due to lack of business. The employer files for bankruptcy and lays off all 100 employees as a result. No closing has taken place for the purposes of chapter 394B, HRS.

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Employer B is a retail store employing 50 employees. The employer loses the lease in the shopping center in which the store is located. As a result, all employees are laid off. No closing has taken place for the purposes of chapter 394B, HRS.

Employer C owns and operates a shrimp farm employing 200 workers. The shrimp farm is totally devastated by a hurricane, which forces the employer to lay off all employees. No closing has taken place for the purposes of chapter 394B, HRS.

Employer D is a local hotel employing 75 employees. The hotel is sold to a foreign investor and all employees are laid off, although the hotel continues to operate with different employees. For the purpose of chapter 394B, HRS, a closing of the hotel has occurred. [Eff: 8/15/88] (Auth: HRS §394B-10) (Imp: HRS §394B-2)

§12-506-5 Partial closing. (a) In order for there to be a partial closing, there shall be:

- (1) A sale, transfer, merger, and other business takeover or transaction of business interests; and
- (2) A permanent shutting down of a portion of operations within a covered establishment due to paragraph (1); and
- (3) An actual or potential termination of a portion

of the employees of a covered establishment by the employer as a result of paragraph (2).

(b) Business shutdowns which occur as a direct result of or in connection with factors such as business failure, bankruptcy, or loss of lease or contract are not considered partial closings for the purposes of chapter 394B, HRS.

Examples:

Corporation A has branch operations in various cities throughout the country. Corporation A sells the Hawaii branch with 80 employees to a

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Honolulu hui. As a result of the sale, 30 employees of the Corporation A Hawaii branch are laid off. For the purposes of chapter 394B, there has been a partial closing of Corporation A and a lay-off of a portion of the employees.

Exetor Company, with 200 employees, recently was purchased by M Enterprises. Exetor decides that the data processing department is no longer needed because they are able to get data processing from M Enterprises' data processing division and thus lays off the data processing employees. For the purpose of chapter 394B, HRS, there has been a partial closing of Exetor Company and a lay-off of a portion of the employees.

Pine Company was purchased outright by Company M. As a direct result of the sale, 300 of the 400 employees of Pine Company are laid off gradually over a two-year period. For the purposes of chapter 394B, HRS, there has been a partial closing of Pine Company and a lay-off of a portion of employees. [Eff: 8/15/88] (Auth: HRS §394B-10) (Imp: HRS §394B-2)

§12-506-6 Relocation. (a) In order for there to be a relocation for the purposes of chapter 394B, HRS, there must be a removal of all or substantially all of the industrial, commercial, or business operations in a covered establishment to a location outside of the State of Hawaii.

(b) A relocation requires a notification and dislocated worker allowance if it occurs due to a sale, transfer, merger, and other business takeover or transaction of business interests which results in or may result in a lay-off or termination of employees of a covered establishment by the employer.

(c) Relocations that occur due to factors such as business failure, bankruptcy, or loss of lease or contract

are not covered by this section. [Eff: 8/15/88] (Auth: HRS §394B-10) (Imp: HRS §394B-2)

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§12-506-7 Notification. (a) Any employer subject to the provisions of chapter 394B, HRS, shall provide written notification not less than sixty calendar days prior to the closing, partial closing, or relocation to each affected employee and to the director.

(b) Written notification to the affected employee shall include:

- (1) Date of proposed closing, partial closing, or relocation; and
- (2) Information that the employee, upon lay-off or termination, may be eligible for dislocated worker allowance, for which the employee must receive a determination of eligibility for unemployment compensation benefits from the department.

(c) Written notification to the director shall include:

- (1) Name and address of the employer;
- (2) Person to contact;
- (3) Date of the closing, partial closing, or relocation;
- (4) Number of employees at the covered establishment;
- (5) Approximate number of employees to be laid off or terminated.

(d) Any employer who fails to provide each employee and the director with timely written notification of a closing, partial closing, or relocation shall be liable for the civil penalties applicable under chapter 394B, HRS. [Eff 8/15/88; am 8/15/02] (Auth: HRS §394B-10) (Imp: HRS §394B-9)

§12-506-8 Dislocated worker allowance. (a) To receive a dislocated worker allowance, an affected employee shall:

- (1) Be laid off or terminated as a result of a closing, partial closing, or relocation;
- (2) Not receive any supplemental unemployment compensation benefits as a result of any contractual agreement arrived at through a collective bargaining process;
- (3) Apply for and be eligible under section 383-29(a), HRS, and not be disqualified under section 383-30, HRS, to receive payment for

unemployment compensation for that particular week under chapter 383, HRS; and

(4) File a claim to receive the dislocated worker allowance with the employer in accordance with procedures established by the employer.

(b) The employer shall determine the amount of dislocated worker allowance payable to the employee. The dislocated worker allowance payment is the difference between the employee's average weekly wages prior to the closing, partial closing, or relocation and the unemployment insurance weekly benefit amount.

(c) An employee who is eligible for the dislocated worker allowance shall receive directly from the employer such allowance for a total of four weeks upon determination of eligibility for each week.

(d) Upon receipt of an eligibility determination from the employee, the employer shall promptly make payment of the dislocated worker allowance to the employee. [Eff: 8/15/88] (Auth: HRS §394B-10) (Imp: HRS §394B-10)

§12-506-9 Petition for declaratory ruling. Any interested person may petition the director for a declaratory order as to the applicability of any provision of chapter 394B, HRS, or of any rule promulgated or order rendered thereunder, pursuant to section 91-8, HRS. In any such proceeding, in addition to section 12-1-5, Hawaii Administrative Rules, the director may require any other person to file any data or memoranda on any positions taken by an employer or employee on the petition, and may further require the person to take part in any hearing on the petition ordered by the director. Any other person may request a hearing by filing a requests in writing and stating in detail why a hearing is necessary for a fair consideration of the petition. Orders disposing of petitions in these cases shall have the same status as other departmental orders. [Eff: 8/15/88] (Auth: HRS §394B-10) (Imp: HRS §394B-10)