



EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

July 20, 2009

Ms. Cheryl Atkinson, Administrator  
Office of Workforce Security  
200 Constitution Avenue NW, Room S-4231  
Washington, DC 20210

Dear Ms. Atkinson:

This letter serves as Hawaii's application for the two-thirds modernization incentive payment for the eligibility provisions on part-time workers and separations due to compelling family reasons. I certify that this application is submitted in good faith with the intention of providing benefits to unemployed workers who meet the eligibility provisions on which this application is based.

On July 2, 2009, I signed into law S.B. No. 1568 S.D. 2 H.D. 1, thereby amending Hawaii Revised Statutes Chapter 383 to meet the federal requirements to receive additional special transfers under the American Recovery and Reinvestment Act of 2009. A copy of Act 171 (2009) is enclosed for your reference and I certify that it is a true and accurate copy. This legislation codifies Hawaii's ongoing policy and practices regarding part-time workers and separations due to compelling family reasons.

Under Act 171 (2009), unemployed part-time workers can seek part-time work if the majority of the weeks of work in the base period are based on part-time employment. The law provides that an individual shall not be denied unemployment benefits under any provision relating to availability for work, active search for work, or refusal to accept work solely because that individual is seeking only part-time work. Even prior to this enactment, Hawaii allowed individuals to seek part-time employment if the individual's unemployment claim was based on part-time employment.

Also under Act 171 (2009), the new law also provides for no disqualification when an individual is separated due to compelling family reasons including domestic or sexual violence, illness or disability of the individual's immediate family, and to accompany a spouse due to a change of the spouse's employment. In a memorandum to our staff, the individual's immediate family is clarified and interpreted to mean the individual's spouse, parents, and minor children under the age of 18 under all circumstances cited in the law. Further interpretation in the memorandum also clarified that the individual need only demonstrate that the decision to separate from work was based on his/her belief that

Ms. Cheryl Atkinson, Administrator  
July 20, 2009  
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continued employment would jeopardize the safety of the individual or a member of the individual's immediate family. By policy and rule, Hawaii already allowed benefits to individuals who quit to relocate with a spouse affected by job transfers and those who quit due to compelling personal reasons such as domestic violence, sexual harassment, or illness/disability of a family member. Enclosed for your reference is a copy of the memorandum provided to the Unemployment Insurance Division staff regarding the interpretation of this new law.

I certify that these provisions are permanent and not subject to discontinuation under any circumstances other than repeal by the Legislature.

Hawaii intends to use the incentive payment to pay unemployment benefits and to pay unemployment insurance and employment service administration costs upon state legislation appropriation.

If you have questions regarding this application, please call Mr. Darwin L.D. Ching, Director of the Department of Labor and Industrial Relations, at (808) 586-8844.

Sincerely,



LINDA LINGLE

Enclosures (2)

c: Gerard Hildebrand, Division Chief, USDOL UC Legislation  
Jamie Bachinski, Division Chief, SFDOL Region 6  
Linda Uesato, Administrator, Unemployment Insurance Division



GOV. MSG. NO. 790

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

July 2, 2009

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fifth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on July 2, 2009, the following bill was signed into law:

SB1568 SD2 HD1

A BILL FOR AN ACT  
RELATING TO UNEMPLOYMENT INSURANCE.  
ACT 171 (09)

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

Approved by the Governor

on JUL 2 2009

THE SENATE  
TWENTY-FIFTH LEGISLATURE, 2009  
STATE OF HAWAII

ACT 171  
S.B. NO. 1568  
S.D. 2  
H.D. 1

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## A BILL FOR AN ACT

RELATING TO UNEMPLOYMENT INSURANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 383, Hawaii Revised Statutes, is  
2 amended by adding two new sections to be appropriately  
3 designated and to read as follows:

4 "§383- Part-time work; benefits available.

5 Notwithstanding any law to the contrary under this chapter, an  
6 individual shall not be denied regular unemployment benefits  
7 relating to availability for work, active search for work, or  
8 refusal to accept work, solely because the individual is seeking  
9 only part-time work; provided that this section shall not apply  
10 if a majority of the weeks of work in the individual's base  
11 period does not include part-time work.

12 §383- Separation for compelling family reason. (a) An  
13 individual shall not be disqualified from regular unemployment  
14 benefits for separating from employment if that separation is  
15 for a compelling family reason.

16 For purposes of this section, the term "compelling family  
17 reason" means any of the following:



1       (1) Domestic or sexual violence that is verified by  
2       reasonable and confidential documentation that causes  
3       the individual to reasonably believe that the  
4       individual's continued employment may jeopardize the  
5       safety of the individual or any member of the  
6       individual's immediate family (as defined by the  
7       United States Secretary of Labor), including any of  
8       the following circumstances:

9       (A) The individual has a reasonable fear of the  
10       occurrence of future domestic or sexual violence  
11       at, en route to, or en route from the  
12       individual's place of employment, including being  
13       a victim of stalking;

14       (B) The anxiety of the individual to relocate to  
15       avoid future domestic or sexual violence against  
16       the individual or the individual's minor child  
17       prevents the individual from reporting to work;

18       (C) The need of the individual or the individual's  
19       minor child to obtain treatment to recover from  
20       the physical or psychological effects of domestic  
21       or sexual violence prevents the individual from  
22       reporting to work;



1           (D) The employer's refusal to grant the individual's  
2           request for leave to address domestic or sexual  
3           violence and its effects on the individual or the  
4           individual's minor child, including leave  
5           authorized by Section 102 of the Federal Family  
6           and Medical Leave Act of 1993, Public Law 103-3,  
7           as amended, or other federal, state, or county  
8           law; or

9           (E) Any other circumstance in which domestic or  
10           sexual violence causes the individual to  
11           reasonably believe that separation from  
12           employment is necessary for the future safety of  
13           the individual, the individual's minor child, or  
14           other individuals who may be present in the  
15           employer's workplace;

16           (2) Illness or disability of a member of the individual's  
17           immediate family (as defined by the United States  
18           Secretary of Labor); or

19           (3) The need for the individual to accompany the  
20           individual's spouse, because of a change in the  
21           location of the spouse's employment, to a place from

1           which it is impractical for the individual to commute  
2           to work.

3           (b) The department may request as reasonable and  
4           confidential documentation under subsection (a) (1) the following  
5           evidence:

6           (1) A notarized written statement of the individual  
7           attesting to the status of the individual or the  
8           individual's minor child as a victim of domestic or  
9           sexual violence and explaining how continued  
10           employment creates an unreasonable risk of further  
11           violence;

12           (2) A signed written statement from:

13           (A) An employee, agent, or volunteer of a victim  
14           services organization;

15           (B) The individual's attorney or advocate;

16           (C) A minor child's attorney or advocate; or

17           (D) A medical or other professional from whom the  
18           individual or the individual's minor child has  
19           sought assistance related to the domestic or  
20           sexual violence,



1           attesting to the domestic or sexual violence and  
2           explaining how the continued employment creates an  
3           unreasonable risk of further violence; or

4           (3) A police or court record suggesting or demonstrating  
5           that the continued employment may cause an  
6           unreasonable risk of further violence.

7           (c) All information provided to the department pursuant to  
8           this section, including any statement of the individual or any  
9           other documentation, record, or corroborating evidence  
10           discussing or relating to domestic or sexual violence, and the  
11           fact that the individual has applied for, inquired about, or  
12           obtained unemployment compensation by reason of this section  
13           shall be retained in the strictest confidence by the  
14           individual's former or current employer, and shall not be  
15           disclosed except to the extent that disclosure is requested or  
16           consented to by the employee, ordered by a court or  
17           administrative agency, or otherwise required by applicable  
18           federal or state law.

19           (d) As used in this section, the terms "domestic or sexual  
20           violence," "stalking," and "victim services organization" shall  
21           have the same meaning as in section 378-71."

22





- 1 SECTION 2. New statutory material is underscored.
- 2 SECTION 3. This Act shall take effect on July 1, 2009.

APPROVED this 2 day of JUL , 2009



GOVERNOR OF THE STATE OF HAWAII

State of Hawaii  
Department of Labor and Industrial Relations  
UNEMPLOYMENT INSURANCE DIVISION

**INTER-OFFICE COMMUNICATION**

TO James Hom, Oahu Branch Manager  
Alvin Inoue, Hawaii Branch Manager  
Derek Fukuda, Maui Branch Manager  
Lisa Nakamura, Kauai Branch Manager

FROM Linda Y. Uesato, Administrator, UI Division

DATE July 9, 2009

SUBJECT Act 171 (S.B. No. 1568 S.D. 2 H.D. 1)

S.B. No. 1568 S.D. 2 H.D. 1 was passed by the 2009 State Legislature and signed into law by Governor Lingle on July 2, 2009 as Act 171. Act 171 amends Chapter 383, Hawaii Revised Statutes, by adding two new sections to permit UI benefits to individuals who seek part-time work only and to individuals who are separated from employment for compelling family reasons. This measure was introduced to comply with "Title II – the Assistance for Unemployed Workers and Struggling Families Act" of the federal American Recovery and Reinvestment Act of 2009 (ARRA) for Hawaii to qualify for \$20.3 million in UI modernization special transfer funds.

The intent of the ARRA is to extend UI eligibility to a larger population of unemployed individuals, including part-time workers who may be denied UI benefits because they are required to seek full-time work and those who are separated for personal compelling reasons involving the individual and the individual's immediate family. The final version of S.B. No. 1568 contains relevant UI modernization sections of the ARRA but went further to insert language to describe domestic or sexual violence, clarify documentation to verify domestic or sexual violence, and require confidentiality of such documents. Despite the additional language, the overarching broad meaning of the ARRA shall be adhered to in the adjudication process.

The intended inclusiveness of the ARRA shall be consistently applied in rendering nonmonetary determinations that are impacted by the new law as follows:

A. PART-TIME WORKERS

1. The law provides that an individual shall not be denied unemployment benefits under any provision relating to availability for work, active search for work, or refusal to accept work solely because such an individual is seeking only part-time work. This provision recognizes that an individual is still considered eligible for benefits even if only available for a portion of the week claimed as long as the individual does not withdraw from the labor market.

2. Continue to apply existing policy and practice by allowing individuals who worked the majority of weeks of work in the base period in part-time employment and whose UI weekly benefit amount is based on part-time employment to be available for work under similar conditions, comparable to the individual's part-time work experience in the base period. No AA issue should be created for such individuals who were previously employed on a part-time basis and are only available for and seeking part-time work to the same extent as in their base period.
  - Example: If an individual has worked 40 weeks in the base period and 21 weeks are part-time, this individual may limit his/her availability to only part-time work as the majority of weeks of work in the base period included part-time work.
  - Example: If an individual worked 16 hours per week in the base period, this individual is required to be available for and seek jobs with at least 16 hours of work per week.
3. If the majority of weeks of work in the base period employment do not include part-time work, the individual must seek full-time work. An AA issue should be created and benefits may be denied if such individual refuses to be available for and seek full-time work.
4. SW issues should be adjudicated in accordance with the above policy guidance.

B. SEPARATION FOR COMPELLING FAMILY REASONS

The ARRA compliant sections of Act 171 refer to non-disqualifying voluntary quit and discharge situations due to "compelling family reasons." An individual shall not be disqualified for separating from work under any and all of the circumstances listed below. For purposes of this section, the individual's immediate family as defined by the United States Secretary of Labor includes the individual's spouse, parents, and minor children under the age of 18.

1. Domestic or sexual violence that is verified by reasonable and confidential documentation which causes the individual to reasonably believe that the individual's continued employment may jeopardize the safety of the individual or any member of the individual's immediate family.
  - a. Under subsection (a), any references to the individual or the individual's minor child in Act 171 shall be considered to be examples of situations addressing a family

All Branch Managers

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member that could similarly affect other immediate family members such as the individual's spouse or parents.

- b. Under subsection (b), Act 171 contains examples of documentation for purposes of verifying the individual's belief that continued employment would jeopardize the safety of the individual or a member of the immediate family. Any other kind of evidence that reasonably proves domestic violence is also acceptable. The individual is not required to provide more than one type of evidence. The individual is also not required to produce evidence that he/she was advised to separate from work due to domestic violence. The individual need only demonstrate that the decision to separate from work was based on his/her belief that continued employment would jeopardize the safety of the individual or a member of the individual's immediate family.
- c. Act 171 expands upon Section 12-5-47(c)(7), Administrative Rules, which currently allows good cause to an individual who is a victim of domestic or sexual violence, to include all discharges as well.
- d. In discharge situations, there must be a willful or wanton disregard of the employer's interest to warrant misconduct. Separations for compelling family reasons do not generally meet the conditions of misconduct contained in Section 12-5-51(c) or 12-5-51(d), Administrative Rules.
  - Where the individual fails to notify the employer of an absence(s), misconduct may exist despite the fact that there are circumstances of a compelling family reason. However, further investigation is necessary to determine the reason for the lack of notification to the employer.
  - Example: If an individual was hospitalized due to domestic violence and was unable to contact the employer and was subsequently discharged by the employer, this individual is considered to be separated from work due to compelling family reasons.
  - Example: If an individual made a sudden decision to go into hiding due to domestic violence and was afraid to contact the employer and was subsequently discharged by the employer, this individual is considered to be separated from work due to compelling family reasons.

2. Illness or disability of a member of the individual's immediate family.
  - a. "Illness" means a verified illness which necessitates the care of the ill person for a period of time longer than the employer is willing to grant leave (paid or otherwise). "Disability" means a verified disability which necessitates the care of the disabled person for a period of time longer than the employer is willing to grant leave (paid or otherwise) for. "Disability" encompasses all types of disability, including (1) mental and physical disability; (2) permanent and temporary disabilities; and (3) partial and total disabilities.
  - b. Verification of the illness or disability by a medical doctor is not required if other sources of verification are available such as from a qualified professional such as a social worker.
  - c. This paragraph expands our current policy of allowing personal good cause to individuals who leave employment to care for another family member to include discharges as well. Guidance on discharge situations can be found in B. 1. d. above.
3. The need for the individual to accompany the individual's spouse because of a change in the location of the spouse's employment to a place from which it is impractical for the individual to commute to work.
  - a. "Impractical" is based on commuting patterns in the locality.
  - b. This part of the bill continues our interpretation and policy of allowing personal good cause to individuals who must leave employment to relocate due to a change in their spouse's employment similar to Section 12-5-47(c)(4), Administrative Rules, which currently allows good cause due to a change in the individual's marital or domestic status. Discharges involving relocating with a spouse also fall under this provision.

C. AA RELATED ISSUES

For individuals separated due to compelling family reasons, any AA related issues must still be adjudicated under the existing law.

1. Individuals must meet the able and available requirements by registering for work, making an active search for work, and being ready, willing, and able to accept work in order to be eligible for UI benefits. Any barriers to reemployment or withdrawal from the labor market should be adjudicated accordingly.

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- Example: If an individual quits work for a compelling family reason and is not disqualified under VL but is now unavailable for work, the individual would be considered ineligible and denied benefits under AA.

If you have questions regarding this memorandum, please call Ellen Kai at 586-9070.

Attachment