

V. DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

STATE MANDATED EMPLOYEE BENEFITS

TEMPORARY DISABILITY INSURANCE (TDI)

The Hawaii Temporary Disability Insurance (TDI) law was enacted in 1969, which requires employers to provide partial “wage replacement” insurance coverage to their eligible employees for nonwork-related sickness or injury. This means that if an employee is unable to work because of an off-the-job sickness or injury and that employee meets the qualifying conditions of the law, the disabled employee will be paid disability or sick leave benefits to partially replace the wages lost. TDI, however, does not include medical care.

To be eligible for TDI benefits, an employee must have at least 14 weeks of Hawaii employment during each of which the employee was paid for 20 hours or more and earned not less than \$400 in the 52 weeks preceding the first day of disability. The 14 weeks need not be consecutive nor with only one employer. The employee must also be in current employment to be eligible.

Some employees are excluded from coverage such as the employees of the federal government, certain domestic workers, insurance agents and real estate sales persons paid solely on a commission basis, individuals under 18 years of age in the delivery or distribution of newspapers, certain family employees, student nurses, interns and workers in other categories specifically excluded by the law. Refer to sections 392-5 and 392-27 of the law for exclusions and ineligibility for benefits. See www.hawaii.gov/labor/dcd for more information.

WORKERS’ COMPENSATION (WC)

An employee’s safety and well being on the job are important. However, accidents and illnesses can arise from work and when they do, employees are covered under the WC law. The Hawaii WC was enacted in 1915, and its purpose was to provide wage loss compensation and medical care to those employees who suffer a work-related injury. The WC law requires the employer to provide certain benefits without regard to the fault of the employer and prohibits an employee from filing civil action against the employer for work-related injuries or illnesses.

Any employer, other than those excluded (section 386-1), having one or more employees, full-time or part-time, permanent or temporary, is required to provide WC coverage for its employees. The statutory “presumption” places on the employer the burden of producing substantial evidence to the contrary to rebut a claim for a covered work injury. See www.hawaii.gov/labor/dcd for more information.

UNEMPLOYMENT INSURANCE

Unemployment Insurance (UI) is a State-operated program that provides temporary financial assistance to qualified workers who are unemployed through no fault of their own and meet the legal requirements of the law. Unemployment insurance benefits are paid as a matter of legal entitlement, not need. Benefits are based on your past employment and attachment to the labor market rather than on your financial situation.

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Unemployment benefits are intended for an employee's use in paying for part of living costs while the employee is seeking another job. By making the money available to an out-of-work person, unemployment insurance also helps to maintain the economic stability of the State.

Employers pay all costs of unemployment insurance through a tax on their payrolls or on a reimbursable basis. Workers do not pay any part of their wages to finance unemployment benefits or the unemployment insurance program. See www.hawaii.gov/labor/ui for more information.

PREPAID HEALTH CARE

Originally enacted in 1974, the Hawaii Prepaid Health Care Act was the first in the nation to set minimum standards of health care benefits for workers. Employers, excluding Federal, State and City government and other categories specifically excluded by the law (Sections 393-3(8), 393-5 and 393-6) are required to provide Hawaii employees, who suffer a disability due to non-work related illness or injury, with adequate medical coverage protecting them from the high cost of medical and hospital care.

Employers must provide health care coverage to employees who work at least twenty (20) hours per week and earn 86.67 times the current Hawaii minimum wage a month ($\$6.75 \times 86.67 = \585). Coverage commences after four (4) consecutive weeks of employment or the earliest time thereafter at which coverage can be provided by the health care plan contractor, which is usually the first of the month. See www.hawaii.gov/labor/dcd for more information.

PERSONAL SERVICES CONTRACTORS

Characterization of a worker as an employee may also have financial implications regarding various state-mandated benefits. An employee may be eligible for Workers' Compensation (Chapter 386, Hawaii Revised Statutes), Temporary Disability (Chapter 392, Hawaii Revised Statutes) and Unemployment Insurance (Chapter 383, Hawaii Revised Statutes) benefits that the State will be obligated to provide. However, the State is excluded as an employer from providing medical insurance under the Pre-paid Health Care law, Section 393-3(3), Hawaii Revised Statutes.

State laws determine whether workers are employees for purposes of workers' compensation, temporary disability, and unemployment insurance. Workers' compensation and temporary disability use the Control Test and Relative Nature of the Work Test to determine if a worker is an employee and is therefore eligible for benefits. Unemployment Insurance uses a test referred to as the ABC Test. A full explanation of these tests can be reviewed at the Department of Labor and Industrial Relations website at http://hawaii.gov/labor/documents/ind_contr_init.pdf. The practical effect in the application of these tests is that individuals are more often found to be employees rather than independent contractors.

Because of the differences in definitions, it is possible for a worker to be classified as an employee for Federal employment tax purposes and an independent contractor for state purposes and

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vice versa. (Internal Revenue Services training material, 8/2005). Depending on the control, relative nature of the work, and other issues involving an individual's usual course of business a worker's characterization could change from project to project, so the analysis should be done on a case-by-case basis.

The State of Hawaii is "self-insured" regarding temporary disability, workers' compensation and unemployment insurance.

**FAQ – PERSONAL SERVICE CONTRACTS
STATE MANDATED EMPLOYEE BENEFITS**

1. Q. What are the statutory authorities that may require the State to provide unemployment insurance, workers' compensation, and temporary disability insurance to PSC contractors that are paid through the State's payroll?

A. DLIR has opined that personal services contracts are subject to the following because of the type of work being performed, that is, regardless of whether the service provider is called an independent contractor or an employee, the State may be required to fulfill the requirements for:

Unemployment insurance (HRS chapter 383)

Section 383-1 defines "employing unit" to specifically include the State; some types of employment may be excluded but most of the personal services contracts seen are included. (See excluded service in HRS 383-7.) Section 383-6 defines the control test to determine whether or not the worker is an employee or an independent contractor. Section 383-61 requires the payment of contributions to the Unemployment Fund by employers.

Workers Compensation Law (HRS chapter 386)

The definition of "Employer" specifically includes the State, § 386-1. Section 386-128 says employers may insure for Workers Comp with any authorized insurance carrier, with the implication of the permissive "may" being they can self-insure.

Temporary Disability Insurance (HRS chapter 392)

The definition of "Employer" specifically includes the State, § 392-3. Section 392-41, HRS requires employers to secure temporary disability insurance benefits for employees.

2. Q. Are personal services contracts (PSC) subject to temporary disability insurance, workers' compensation, and unemployment insurance?

A. Yes. DLIR has opined that personal services contracts are subject to the above because of the amount of control exercised over the work being performed, regardless of whether the service provider is called an independent contractor or an employee.

3. Q. Are personal services contracts (PSC) subject to medical insurance?

A. No. The State is excluded as an employer from providing medical insurance under the Pre-paid Health Care law, Section 393-3(3), Hawaii Revised Statutes.