

2008 Report on Services for Persons with Developmental Disabilities

Department of Labor and Industrial Relations

Effective July 6, 2007, Act 259 was enacted amending Hawaii's statutes relating to coverage under four labor laws: Unemployment Insurance, Workers' Compensation, Temporary Disability Insurance and Prepaid Healthcare. Section 10 of Act 259 requires the Department of Labor and Industrial Relations (DLIR) to submit a report to the legislature on the financial impact and consequences of the exclusions from the employment related laws (established under the Act), for service providers who provide Medicaid home and community based services for persons with developmental disabilities and mental retardation.

This new law is applicable to the following types of services under the Medicaid home and community based services programs:

1. Chore services
2. Personal assistance and habilitation services
3. Residential habilitation services
4. Supported employment services
5. Respite services
6. Skilled nursing services

Under the new law, workers who are contracted by a recipient of social service payments, such as a person, corporation, or private agency, can voluntarily elect in writing to be an independent contractor of the recipient and give up their rights to any of the four labor programs. For the Unemployment Insurance (UI) program, workers must also be determined by the recipient of social services payments to not be an employee under section 3306 of the Federal Unemployment Tax Act (FUTA).

On February 5, 2008, the UI division provided with a copy of Act 259 and a new form, Voluntary Election to be an Independent Contractor, for employees electing to be independent contractors, to all Medicaid waiver providers and recipients of social service payments in Hawaii. In addition, instructions were given on how to obtain information from the Internal Revenue Service website to determine the status of their workers under section 3306((i), FUTA. The specific information included:

1. IRS Publication 1779, Independent Contractor or Employee
2. Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding
3. IRS Publication 15-A, Employer's Supplemental Tax Guide.

In order to determine the financial impact and consequences of the exclusions from the employment related laws established under Act 259, a survey was sent to all fifty four known employers who are recipients of social service payments. Thirty-three (61%) of the fifty-four employers responded with the following information:

- Number of workers providing Medicaid home and community-based services: 2,537 employees
- Number of workers providing Medicaid home and community-based services that elected to be independent contractors: 78 employees, or, roughly 3% of the total employees. Conversely, nearly 97% of the 2,537 employees elected to remain covered under Hawaii's four labor laws.
- Number of workers providing Medicaid home and community-based services that the employer determined to be independent contractors under section 3306((i), FUTA: 78 employees or roughly 3% of the total employees. These employees are no longer eligible for benefits under each of the four labor programs.

Financial Impact of Act 259 Relative to Employment Related Laws

Estimated total wages paid to the above 78 workers - \$1,110,832

Estimated taxable wages for unemployment insurance purposes (on \$1,110,832) - \$975,063

Estimated unemployment insurance tax savings (on \$975,063) - \$12,494

In the area of Workers' Compensation, Temporary Disability Insurance and Prepaid Healthcare, any measurable impact resulting from Act 259 would be very minimal and insignificant, due to the low numbers of claims filed by individuals who provide Medicaid home and community based services for persons with developmental disabilities and mental retardation.