

**ADMINISTRATIVE RULES
(CHAPTER 5, TITLE 12)**

Subchapter 1 Administration and Enforcement

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**ADMINISTRATIVE RULES
(CHAPTER 5, TITLE 12)**

SUBCHAPTER 1

ADMINISTRATION AND ENFORCEMENT

Historical Note: Subchapter 1 is based substantially upon Regulation I of the Rules and Regulations of the Department of Labor and Industrial Relations relating to the Administration and Enforcement of the Hawaii Employment Security Law. [Eff. 7/15/51; am 10/4/51; am 7/5/53; am 10/1/55; am 12/16/76; R 6/26/81]

12-5-1 Definitions. For the purposes of this chapter, unless the context clearly requires otherwise:

"Attached to a regular employer" means:

- (1) The employee is being offered work each week; 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 four weeks;

"Base period" shall be as defined in section 383-1, Hawaii Revised Statutes, except that where the individual established a valid claim using the alternative base period as provided in section 383-29(a)(5)(C), Hawaii Revised Statutes, the base period shall be the alternative base period as defined in section 383-1, Hawaii Revised Statutes;

"Benefits" shall be as defined in section 383-1, Hawaii Revised Statutes;

"Benefit year" shall be as defined in section 383-1, Hawaii Revised Statutes;

"Calendar quarter" shall be as defined in section 383-1, Hawaii Revised Statutes;

"Contributions" shall be as defined in section 383-1, Hawaii Revised Statutes;

"Covered employment" for purposes of requalification under section 383-30, Hawaii Revised Statutes, includes:

- (1) "Insured work" as defined in section 383-1, Hawaii Revised Statutes;
- (2) "Federal service" as defined in Chapter 85, Title 5, United States Code;
- (3) Services performed for an employer who has voluntarily elected coverage under section 383-77, Hawaii Revised Statutes.

For purposes of applying the successive benefit year provisions of section 383-29(a)(5), Hawaii Revised Statutes, services performed in "covered employment" are subject to the requirements of section 12-5-33;

"Department" shall be as defined in section 383-1, Hawaii Revised Statutes;

"Director" shall be as defined in section 383-1, Hawaii Revised Statutes;

"Employer" shall be as defined in section 383-1, Hawaii Revised Statutes;

"Employing unit" shall be as defined in section 383-1, Hawaii Revised Statutes;

"Employment office" means an office of the employment service division of the department of labor and industrial relations, or any other office authorized by the department to act as a public employment office;

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

"Insured work" shall be as defined in section 383-1, Hawaii Revised Statutes;

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

"Part-total unemployment" means the unemployment of any individual who, during a particular week, works less than full time and earns less than that individual's weekly benefit amount under circumstances other than those described under the definition of "partial unemployment";

"Pay period" means that period of time during which the wages due on any pay day were earned;

"Physician" shall be as defined in section 386-1, Hawaii Revised Statutes;

"Referee" shall be as defined in section 383-1, Hawaii Revised Statutes;

"Similar remuneration" as defined in section 383-1, Hawaii Revised Statutes, requires the following elements:

- (1) That the remuneration and time away from the active performance of services is accrued pursuant to the contract of hire or terms and conditions of work based upon past weeks during which services were performed within the employment relationship; and
- (2) That the employment relationship continues during the time with respect to which such remuneration is payable;

"Total unemployment" means the unemployment of any individual in any week during which that individual performs no services and with respect to which no wages are payable to that individual;

"Unemployment" shall be as defined in section 383-1, Hawaii Revised Statutes, except that no individual shall be deemed to be unemployed in any week in which the individual receives temporary disability insurance benefits pursuant to Chapter 392, Hawaii Revised Statutes;

"Valid claim" means a claim for unemployment insurance benefits properly filed under section 383-32, Hawaii Revised Statutes, and this chapter by an unemployed individual whom the department finds has met the requirements of section 383-29(a)(5), Hawaii Revised Statutes;

"Wages" shall be as defined in section 383-10;

"Wages paid" includes wages constructively paid as well as wages actually received by the worker. Wages are constructively paid when they are credited to the account of or set apart for a worker without any substantial restriction as to the time or manner of payment or condition upon which payment is to be made, although not then actually reduced to the worker's possession;

"Wages payable" means wages earned, whether paid or unpaid;

"Week" means a period of seven consecutive calendar days commencing with Sunday and ending at midnight the following Saturday, except that a week of unemployment of an individual who has performed less than full-time work for that individual's regular employer may be deemed to begin with the first day of the individual's established pay period, upon showing by the employer that submission of low earnings report as required by section 12-5-17(h) for

periods other than established payroll weeks would be unduly burdensome;

"Week of employment" means, for the purpose of section 383-1, Hawaii Revised Statutes, a week in which the individual has performed services during any portion of a day, for two days within a week, or during any four hours within such week for one or more subject employers or with respect to which an individual has remuneration from one or more subject employers in the form of vacation, holiday, or sickness pay or similar remuneration;

"Weekly benefit amount" means the amount derived by dividing an individual's total high quarter wages by twenty-one and rounded to the next higher multiple of \$1; except that, for purposes of section 383-29(a)(5), Hawaii Revised Statutes, the amount equals to one twenty-first of the individual's total high quarter wages prior to rounding to a whole dollar amount shall be used;

"Work" for purposes of applying the disqualification pursuant to section 383-30, Hawaii Revised Statutes, includes:

- (1) Services performed in "covered employment" as defined in this section; and
- (2) Excluded services under section 383-7, Hawaii Revised Statutes. [Eff. 6/26/81; am 3/10/86; am 9/23/89; am 10/12/00; am 11/6/06] (Auth: HRS ' 383-92) (Imp: HRS ' ' 383-1, 383-22, 383-29, 383-30, 383-33, 383-34, 383-44, 383-62, 383-70, 383-94)

' 12-5-2 Master and servant relationship. (a) Services are deemed to be in employment if sections 383-2 and 383-10, Hawaii Revised Statutes, are satisfied, unless and until it is shown to the satisfaction of the department that all of the three-fold conditions or AABC@ test under section 383-6, Hawaii Revised Statutes, are met. In applying section 383-6, Hawaii Revised Statutes, to an individual=s services, the following definitions shall apply:

- (1) "Contract of hire" is a written or oral, express or implied, agreement between two or more individuals which creates an obligation to do or not to do a particular thing and where such agreement demonstrates a promise of wages for services performed.
- (2) "Control or direction over the performance of such service" means general control and need not extend to all details of the performance of service. The employer need not actually exercise control; it is sufficient that there is a right to do so.
- (3) (A) "Outside the usual course of the business" refers to services that do not promote or advance the business of the employer, or services that are merely incidental to, and not an integral part of, that business.
(B) "Outside of all the places of business of the enterprise" refers to places other than the business=s home office, headquarters or territory in which the business operates;
- (4) "The individual is customarily engaged in an independently established trade, occupation, profession, or business" refers to an individual who is performing services and is established in the business of performing these services independent of whatever connection the individual may have with an employer and that the individual must have a proprietary interest in such business, something in which the individual has a right of continuity, which the individual can sell or give away, and which is not subject to cancellation or destruction upon severance of the relationship with the employer.

(b) As an aid to determining whether an individual is an employee under the common law rules, twenty factors or elements have been identified as indicating whether sufficient control is present to establish an employer-employee relationship. The twenty factors set forth

below are designed only as guides for determining whether an individual is an employee and the degree of importance of each factor varies depending on the occupation and the factual context in which the services are performed.

- (1) The employer for whom services are being performed requires the individual to comply with instructions regarding when, where, and how services are performed;
- (2) The employer for whom services are being performed requires particular training for the individual performing services;
- (3) The services provided by the individual are part of the regular business of the employer for whom services are being performed;
- (4) The employer for whom services are being performed requires the services be performed by the individual;
- (5) The employer for whom services are being performed hires, supervises or pays the wages of the individual performing services;
- (6) The existence of a continuing relationship between the employer for whom services are being performed with the individual performing services which contemplates continuing or recurring work, even if not full-time;
- (7) The employer for whom services are being performed requires set hours during which services are to be performed;
- (8) The employer for whom services are being performed requires the individual to devote substantially full-time to its business;
- (9) The employer for whom services are being performed requires the individual to perform work on its premises;
- (10) The employer for whom services are being performed requires the individual to follow a set order or sequence of work;
- (11) The employer for whom services are being performed requires the individual to make oral or written progress reports;
- (12) The employer for whom services are being performed pays the individual on a regular basis such as hourly, weekly or monthly;
- (13) The employer for whom services are being performed pays expenses for the individual performing services;
- (14) The employer for whom services are being performed furnishes tools, materials, and other equipment for use by the individual;
- (15) There is a lack of investment in the facilities used to perform services by the individual;
- (16) There is a lack of profit or loss to the individual as a result of the performance of such services;
- (17) The individual is not performing services for a number of employers at the same time;
- (18) The individual does not make such services available to the general public;
- (19) The employer for whom services are being performed has a right to discharge the individual;
- (20) The individual has the right to end the relationship with the employer for whom services are being performed without incurring liability pursuant to an employment contract or agreement. [Eff. 11/6/06] (Auth: HRS §383-92) (Imp: HRS §§383-2, 383-6, 383-11)

'12-5-3 Excluded service. (a) Services shall be deemed to be excluded under section 383-7, Hawaii Revised Statutes, where it is shown to the satisfaction of the department that the conditions for the exclusions have been met. Employers shall provide relevant records, reports, or documents to the department to support application of the exclusion.

(b) As used in section 383-7(2), the term "domestic service" refers to services ordinarily and customarily performed as an integral part of household or private home duties, including, but not limited to, services performed by cooks, waiters, housekeepers, maids, babysitters, janitors, laundresses, caretakers, handypersons, gardeners, and chauffeurs for family use.

(c) As used in section 383-7(3), Hawaii Revised Statutes, the phrase "service not in the course of the employing unit's trade or business" refers to service which does not in any way:

- (1) Promote or advance the trade or business of the employing unit; or
- (2) Contribute to the preservation, maintenance, or operation of its business, business premises or business property.

(d) As used in section 383-7(9)(B), Hawaii Revised Statutes, the phrase "is enrolled and regularly attending classes" includes an individual who is:

- (1) Enrolled and attending formally structured classes on a full-time or part-time basis; or
- (2) Enrolled in independent study courses and attending required occasional formal or informal meetings between the individual and instructor to discuss the individual's progress and direction, including, but not limited to, masters or doctoral degree candidates.

The exclusion applies to individuals who are essentially students in an ongoing intellectual endeavor and for whom work is incidental to the individual's primary educational development and academic aspirations.

(e) Section 383-7(9)(C), Hawaii Revised Statutes, applies to an individual who is a full-time student, regardless of age, in a work-study program. The work-study programs can be at or below university level and must be integrated into the regular school curriculum and form a part of the full-time education program.

(f) As used in section 383-7(18), Hawaii Revised Statutes, the term "travel agency" shall be limited to any business entity organized to act as an intermediary between a person seeking to provide travel services and a person seeking to purchase travel services. "Travel services" include transportation by air, sea, rail; ground transportation; hotel accommodations; package tours; or specialized air, land or sea tour excursions and activities, whether offered on a wholesale or retail basis.

(g) As used in section 383-7(20), Hawaii Revised Statutes, the term "family-owned" refers to ownership by members of a family related to each other by blood, marriage, or legal adoption." [Eff. 10/12/00] (Auth: HRS ' 383-92) (Imp: HRS ' 383-7)

'12-5-4 (Reserved)

'12-5-5 Cash value of remuneration in kind. (a) Board, lodging, or any other payment in kind received by a worker from the worker's employer in addition to or in lieu of (rather than as a deduction from) money wages shall be deemed to be remuneration paid by the employer.

(b) The reasonable cash value of such payments in kind, as established by the department, shall be used in determining the wages paid to the worker and in computing

contributions due from the employer.

(c) Where a money value for such payments in kind is agreed upon in a contract of hire, the amount so agreed upon shall, if more than the rates specifically determined by the department or the rates prescribed herein, be deemed the cash value of such payment.

(d) Until and unless, in a given case, a rate for board or lodging is determined by the director, board or lodging furnished as payment in kind shall be deemed to have not less than the following values:

| | |
|-----------------------------|---------|
| Full board and room, weekly | \$28.00 |
| Meals, per week | 18.90 |
| per day | 2.70 |
| per meal | .90 |
| Lodging, per week | 9.10 |
| per day | 1.30 |

[Eff. 6/26/81] (Auth: HRS ' ' 383-10, 383-92) (Imp: HRS ' 383-10)

' ' **12-5-6 to 12-5-8 (Reserved)**

' **12-5-9 REPEALED.** [R 9/23/89]

' ' **12-5-10 to 12-5-12 (Reserved)**

' **12-5-13 Records.** (a) Each employing unit having employment performed for it shall maintain records as indicated in this section.

- (1) For each worker, unless the department has ruled that the worker's services do not constitute employment:
 - (A) Name;
 - (B) Social security account number;
 - (C) Type of work performed;
 - (D) Place in which the worker's services are performed and, if services are performed outside the State, place of the worker's residence;
 - (E) Date on which the worker was hired, rehired, or returned to work after temporary lay-off, last day worked, and date separated from work, and reason therefor;
 - (F) Rate of pay, remuneration paid the worker for services, and dates of payment, showing separately:
 - (i) Cash remuneration, including and specifying such special payments as bonuses and gifts;
 - (ii) Reasonable cash value of remuneration in any medium other than cash; and
 - (iii) Amount of gratuities or tips accounted for by the worker to the employer;
 - (G) Amounts paid the worker as allowances or reimbursement for traveling or other business expenses, date of payment, and the amounts of such expenditures actually incurred and accounted for by the worker; and
 - (H) With respect to pay periods in which the worker performs services in both subject employment and non-subject work, the hours spent and wages earned

in each, shown separately.

(2) Generally:

- (A) Beginning and ending dates of each pay period; and
- (B) Total amount of remuneration paid in any quarter with respect to employment, showing separately the portion of such remuneration on which contributions are payable.

(b) The records required by this section shall be preserved for a period of not less than five years after the calendar year in which the remuneration to which they relate was earned.

[Eff. 6/26/81] (Auth: HRS '383-92) (Imp: HRS '383-94)

' ' 12-5-14 to 12-5-16 (Reserved)

' 12-5-17 Reports. (a) Every employing unit for which services are performed in employment shall file a report within twenty days after such services are first performed on forms provided by the department to determine liability for contributions.

(b) At the time contributions are due and payable as prescribed in section 12-5-21(b), each employer shall submit to the state tax collector, with the contributions, a contribution report. Effective with the quarter ending September 30, 1988, each employing unit shall submit a quarterly wage report with the contribution report and the contribution payment. Every employer shall submit a completed quarterly wage report and contribution report for every quarter regardless of whether such employer is then liable for contributions for that quarter.

(c) The contribution report shall include the following information:

(1) The number of covered workers in the pay period which includes the twelfth day of the month;

(2) The total subject wages including the cash value of all other remuneration;

(3) The total wages paid in the quarter in excess of the taxable wages as determined and indicated on the contribution report form provided by the department;

(4) The net taxable wages paid;

(5) The employer's amount of contribution;

(6) Any additional contribution for prior periods;

(7) The amount of penalty and interest;

(8) Any credit adjustments as determined and indicated on the contribution report provided by the department;

(9) The total amount of contribution due;

(10) The signature of the person completing the report;

(11) The name of the person completing the form, typed or printed legibly;

(12) The telephone number of the person completing the report;

(13) The date of completion of the report; and

(14) Such other relevant and reasonable information as requested by the department.

(d) The quarterly wage report shall be submitted as follows:

(1) The quarterly wage report shall include the following information:

(A) Employee's social security number;

(B) Name of employee;

(C) Total gross wages paid to employee for the quarter;

(D) Employer's federal identification number and state unemployment insurance account number;

- (E) Employer's name;
 - (F) Employer's address;
 - (G) Such other relevant and reasonable information as requested by the department.
- (2) A penalty in the amount of \$30 shall be assessed on any employer who fails to file a quarterly wage report; files a delinquent quarterly wage report; files an insufficient quarterly wage report; or otherwise fails to comply with the provisions of this section. For the purposes of this section, a quarterly wage report shall be considered insufficient if any data item required by the department is incorrect or incomplete. In addition to the \$30 penalty, an employer may be subject to the maximum rate of contributions in accordance with section 383-66(4), Hawaii Revised Statutes.
- (3) If an employer fails to file a quarterly wage report; files a delinquent quarterly wage report; or files an insufficient quarterly wage report, the department may make a determination of a claimant's insured status and eligibility for benefits based upon the claimant's evidence of employment. When wage information is received which affects an existing determination, any redetermination shall be effective only as to benefits paid after the week in which the report was received. If prior to the week of redetermination, the claimant received benefits to which the claimant would not have been entitled had the employer filed a timely, complete, and accurate report, that amount, in the absence of fraud, shall not be recoverable from the claimant but shall be chargeable to the claimant's redetermined maximum benefit amount. Any benefits overpaid to a claimant prior to the effective date of such redetermination shall be charged entirely against the account of the non-complying employer. If an overpayment results from late reporting by more than one employer, the department shall apportion the charges therefor against the accounts of such employers on a pro rata basis.
- (e) The quarterly wage report and contribution report must be submitted on forms provided by the department. In lieu of forms prescribed by the department, an employer may use other means to submit the quarterly wage reports or the contribution report, provided that the employer has first applied for and received the department's approval of the substitute reporting method and agrees to all conditions set by the department for the alternative method. This applies to magnetic tapes, diskettes, facsimile forms, or any other reporting methods intended to replace forms provided by the department. The approval may be revoked at any time at the discretion of the director. Any employer who fails to comply with the requirements of this subsection may be subject to the penalties described in section 12-5-17(d).
- (f) Hire reports shall be submitted as follows:
- (1) When an employer hires a new employee, or rehires an employee, the employer shall report the hiring to the department on forms provided or approved by the department. An employer may report such hires individually or on list form when reporting five or more new hires at the same time. The report shall contain:
- (A) The name and address of the employer;
 - (B) The employer's unemployment insurance account number;
 - (C) The name and social security account number of the employee;

- (D) The date of hire; and
 - (E) Such other relevant and reasonable information as requested by the department.
- (2) An employer shall report these new hires to the department within five working days after the first day of employment of such employees.
 - (3) If an employer fails to report the hiring of an employee, the employer shall pay a penalty of \$10 for each such failure except where the department finds that the failure is excusable.
 - (4) This subsection shall not be applicable after September 30, 1998.
- (g) Wage and separation reports shall be submitted as follows:
 - (1) Employers shall furnish wage or separation information, or both, when requested by the department within five calendar days from the date the request was mailed to the employer. The information requested shall include:
 - (A) The name and address of the employer;
 - (B) The employer's unemployment insurance account number;
 - (C) The first and last name of the employee;
 - (D) The employee's social security account number;
 - (E) The employee's occupation;
 - (F) The period or periods of employment, including beginning and ending dates;
 - (G) The wages paid during the last five completed calendar quarters, and wages paid during the quarter in which the separation occurred;
 - (H) The reasons for separation; and
 - (I) Such other relevant and reasonable information as requested by the department.
 - (2) If an employer fails to furnish the department with the wage and separation information within five calendar days from the date the request was mailed to the employer, the employer shall pay a penalty of \$10.
 - (3) The employer shall submit a timely, complete, and accurate report when the department requests submission of such report. If an employer fails to submit the requested information within the time stated, the department may make a determination of an individual's insured status and eligibility for benefits based upon the individual's evidence of employment and reason for separation. If the late or corrected wage and separation report is received after the determination has been made, any redetermination which may be made necessary by the information in the report shall be effective only as to benefits paid after the week in which the report was received. If prior to the week of redetermination, the individual received benefits to which the individual would not have been entitled had the employer filed a timely, complete, and accurate report, that amount, in the absence of fraud, shall not be recoverable from the individual but shall be chargeable to the individual's redetermined maximum benefit amount. Any benefits overpaid to an individual prior to the effective date of a redetermination as a result of late reporting shall be charged entirely against the account of the employer whose report was late, except where the department finds that the late reporting is excusable. If an overpayment results from late reporting by more than one employer, where the department finds that the late reporting is not excusable, the department shall apportion the charges therefor against the accounts of such employers on a pro rata

basis.

- (4) Paragraphs (1) to (3) shall apply to wage or separation information when requested by the department using other alternative methods as instructed by the department, including but not limited to telephone, fax, or electronic mail.
- (h) 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 of the establishment at which the individual is employed, and the individual's earnings are less than the individual's current weekly benefit amount, the individual's employer shall, upon request by the department:
 - (A) Enter such individual's name, social security account number, gross earnings, week-ending date, and the reasons for the individual's reduced work week on a list form provided or approved by the department and return such 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 such low earnings reports are required; or
 - (B) Furnish the individual personally with such information on a form provided or approved by the department and the individual shall be responsible to submit such report to the unemployment 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 fails to submit the low earnings report in the manner prescribed in (A) or (B) within the time specified by the department, the department shall determine the individual's eligibility for any week benefits are claimed based on the individual's certification of employment and earnings.
 - (i) In the event:
 - (1) An employer terminates the business for any reason whatsoever; or
 - (2) An employer transfers or sells substantially all the assets of the organization, trade, or business to another; or
 - (3) An employer dies; or
 - (4) Bankruptcy or receivership proceedings are instituted by or against an employer; the employer, legal representative, trustee, or receiver, as the case may be, shall, within ten days after such termination or the appointment of such representative, trustee, or receiver, give notice in writing thereof and submit such reports as the department may then request.

Effective with the calendar quarter beginning July 1, 1988 and thereafter, the terminating employer shall submit the quarterly contribution and wage report for the calendar quarter in which the change of ownership or cessation of business occurred and for any earlier quarter for which a report was due but not previously filed, within thirty calendar days of the date that the change or cessation occurred.

(j) In case of unemployment due to a strike, lockout, or other labor dispute, the employer shall file with the director not later than twenty-four hours after such unemployment occurs, a notice setting forth existence of such dispute.

(k) Every employer shall make such other reports as the department deems necessary for

the proper determination of a claim for benefits or for the proper assessment of taxes and shall comply with the instructions which are printed upon any report form issued by the department pertaining to the preparation and return thereof. [Eff. 6/26/81; am 8/5/88; am 9/23/89; am 10/12/00; am 11/6/06] (Auth: HRS ' 383-92) (Imp: HRS ' ' 383-33, 383-65, 383-70, 383-94)

' 12-5-18 to 12-5-20 (Reserved)

' 12-5-21 Contributions by employers. (a) Contributions shall be payable for each calendar quarter with respect to wages paid during such calendar quarter for employment.

(b) Contributions shall become due and shall be paid on or before the last day of the month following the close of the calendar quarter in which wages are paid, except that when the department finds with respect to a particular employer that the collection of contributions which have accrued during any completed or incompletd quarterly or monthly period may be jeopardized, it may advance the due date of such employer's contributions to such date as it deems advisable. [Eff. 6/26/81] (Auth: HRS ' ' 383-61, 383-70, 383-92) (Imp: HRS ' ' 383-61, 383-70)

' 12-5-22 Contribution rates. (a) As used in section 383-66, Hawaii Revised Statutes, the phrase "new or newly covered employer" includes employers who do not qualify for a rate other than the maximum rate because their accounts have not been chargeable with benefits throughout the twelve calendar month period ending on December 31 of the preceding calendar year, as provided under section 383-66(2), Hawaii Revised Statutes, and whose reserve balance is equal to or greater than zero.

(b) The phrase "substantially all the assets" as used in section 383-66(5), Hawaii Revised Statutes, means those assets which are necessary for the continuation of the predecessor employer's organization, trade, or business as a going concern, including:

- (1) Real and personal property;
- (2) Inventories;
- (3) Accounts and notes receivable;
- (4) The trade name;
- (5) Goodwill;
- (6) Patents;
- (7) Copyrights;
- (8) Contracts;
- (9) Franchises; and
- (10) Any other assets necessary for the continuation of the organization, trade, or business.

(c) In determining whether or not an employing unit has acquired substantially all the assets of a predecessor employer's organization, trade, or business, the department shall not be bound by any fixed percentage of the value of the predecessor employer's total assets. The department shall make its determination based upon:

- (1) The particular facts and circumstances in the case;
- (2) Whether the capacity for furnishing employment was transferred; and
- (3) Whether the employing unit employs all or nearly all of the predecessor employer's employees. [Eff. 12/31/84; am 9/23/89] (Auth: HRS ' 383-92) (Imp: HRS ' 383-66)

' 12-5-23 Noncharges for benefits. (a) Employment and wages which have been used

for a determination of benefits which establishes a benefit year shall not thereafter be used as the basis for another monetary determination of benefits, except where amendments to chapter 383, Hawaii Revised Statutes, affect the method of computing base periods or otherwise require reuse of base period wages. Where reuse of base period wages is authorized, benefit costs attributable to wages used in a previous benefit year that are available for a second benefit year shall not be charged against the account of any base period employer.

(b) The noncharge provided in section 383-65(b)(2), Hawaii Revised Statutes, shall apply only if all of the following conditions are satisfied:

- (1) The part-time employment provided by the employer continues uninterrupted from the base period to the period during which the individual is receiving benefits; and
- (2) The individual worked or could have worked substantially the same number of hours each pay period at gross wages which equal or exceed the average gross wages per pay period in the base period.
- (3) The employer shall provide whatever information is reasonable and necessary for the department to determine if each of the above conditions is satisfied. [Eff. 9/23/89; am 11/6/06] (Auth: HRS ' 383-92) (Imp: HRS ' ' 383-1, 383-65)

' 12-5-24 (Reserved)

' 12-5-25 Higher tax contributions controlling. Any report filed by the employer after a department assessment becomes final shall not be used for purposes of reassessing an employer's quarterly tax contributions if it would result in a lower tax contribution; except when it is determined that an employer has no liability for contributions for the quarter in which the department's assessment was made. [Eff. 8/5/88] (Auth: HRS ' 383-92) (Imp: HRS ' ' 383-66, 383-70(c), 383-74)

' 12-5-26 Excusable failure in failing to file. (a) As used in section 383-66(4), Hawaii Revised Statutes, excusable failure connected with the filing of any report is a result due to circumstances beyond the employer's control.

(b) In determining whether an employer's act constituted excusable failure, the department may consider any relevant evidence presented which relates to:

- (1) The employer's reasons for the failure, and efforts taken to avoid the failure;
 - (2) The employer's compliance history of reporting; and
 - (3) The employer's prior penalty waiver requests.
- (c) Situations where excusable failure may be found include, but are not limited to:
- (1) Illness, injury or personal problems suffered by the employee who prepares the reports;
 - (2) Abrupt termination of an employee who prepares the reports;
 - (3) Destruction or loss of records due to fire, theft, or other causes beyond the control of the employer; or
 - (4) Employer is in receivership or under bankruptcy proceedings which prevent submission of a timely report. [Eff 8/5/88] (Auth: HRS ' 383-92) (Imp: ' 383-66(4))

' ' 12-5-27 to 12-5-30 (Reserved)

SUBCHAPTER 2

ELIGIBILITY AND DISQUALIFICATION FOR BENEFITS

Historical Note: Subchapter 2 is based substantially upon Regulation II of the Rules and Regulations of the Department of Labor and Industrial Relations relating to Conditions for Benefit Eligibility and Disqualification for Benefits. [Eff. 12/16/76; R 6/26/81]

' **12-5-31 Registration.** (a) An individual shall be deemed to have registered for work, as required by section 383-29(a)(2), Hawaii Revised Statutes, if the individual has an active registration for work with an employment office in the local community in which the individual is seeking work or, if prior to or within seven calendar days after applying for benefits or as instructed by the department, the individual registers at an employment office or such other place as the department may approve and completes registration procedures as authorized by the department.

(b) The registration may be waived for individuals who are:

- (1) Deemed partially unemployed; or
- (2) Union members in good standing and who are being referred to jobs through their union job placement service; provided that the union agrees to report to the department all individuals who refuse job referrals or offers of work and all individuals not ready, willing, and able to work, and the union is approved by the department for the purpose of waiving registration; or
- (3) Involved in a labor dispute and for whom an employer-employee relationship continues to exist; or
- (4) Suspended from work and for whom an employer-employee relationship continues to exist, provided that the waiver shall apply only to the period of the suspension but not to exceed more than four consecutive weeks of unemployment immediately following the week in which the individual has been suspended.

(c) "Registered for work" as used in section 383-29(a)(2), Hawaii Revised Statutes, means that individuals shall provide information to the employment office to be posted on the department's internet job-matching system, including but not limited to: 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 individuals 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 "registered for work" requirement has been met.

Benefits shall be denied in accordance with section 383-29(a)(2), Hawaii Revised Statutes, for any week with respect to which it is found that the individual failed to register for work for each day of such week and continuing until the conditions of this subsection are met. [Eff 6/26/81; am 11/6/06] (Auth: HRS §§383-29(a)(2), 383-92) (Imp: HRS §383-29(a)(2))

' **12-5-32 (Reserved)**

' **12-5-33 Successive benefit year requirements.** (a) No otherwise eligible individual may receive benefits in a succeeding benefit year unless the individual performed services in

"covered employment" as defined in section 12-5-1 for remuneration after the beginning of the prior benefit year. Remuneration received after the beginning of the prior benefit year for services performed previous to that benefit year shall not be used to meet the successive benefit year requirements.

(b) Disability benefit payments, vacation pay, separation pay or back pay shall not be used to satisfy the successive benefit year requirements where they are not for services performed in covered employment. [Eff. 12/15/89; am 10/12/00] (Auth: HRS ' 383-92) (Imp: HRS ' ' 383-1, 383-29)

' 12-5-34 (Reserved)

' 12-5-35 Availability. (a) An individual shall be deemed able and available for work within the meaning of section 383-29(a)(3), Hawaii Revised Statutes, if the individual is able and available for suitable work during the customary work week of the individual's customary occupation which falls within the week for which a claim is filed.

- (1) An individual shall be deemed able to work if the individual has the physical and mental ability to perform the usual duties of the individual's customary occupation or other work for which the individual is reasonably fitted by training and experience.
- (2) An individual shall be deemed available for work only if the individual is ready and willing to accept employment for which the individual is reasonably fitted by training and experience. The individual must intend and wish to work, and there must be no undue restrictions either self-imposed or created by force of circumstances which prevent the individual from accepting employment.
- (3) Notwithstanding any provisions of this subsection to the contrary, an individual who meets the definition of part-total unemployment under section 12-5-1 may be considered available for work in situations where the individual did not accept an offer of part-time work from an employer:
 - (A) If the offer of part-time work was not in the individual's customary occupation or in the occupation that the individual is seeking full-time employment, and the individual was otherwise available for employment during the normal work week in the individual's customary occupation or in the occupation that the individual is seeking full-time employment;
 - (B) Due to a work schedule conflict with another employer; or
 - (C) Due to lack of sufficient advance notice of a work schedule change.

(b) The individual must be willing to accept the wages and hours and days of employment that are prevailing or customary in the community in which the individual is seeking work. The individual must be available in a labor market area where there is a reasonable demand for the individual's services. The geographical extent of such area is limited to the area in which the individual lives and within which the individual reasonably can be expected to commute to work. An individual shall use any reasonable and available means of transportation, including public transportation and means of transportation customarily employed by persons in the individual's community. All individuals claiming benefits shall make personal efforts to find work as are customarily made by persons in the same occupation who are genuinely interested in obtaining employment. An individual shall use the facilities and methods which are normally used by persons in that person's occupation when seeking work. As an

individual's length of unemployment increases and the individual has been unable to find work in the individual's customary occupation, the individual may be required to:

- (1) Seek work in some other occupation for which the individual is reasonably fitted by training and experience and in which vacancies exist; or
- (2) Lower the individual's wage demands; or
- (3) Broaden the geographical area in which the individual will accept work; or
- (4) Accept counseling for possible retraining or a change in occupation.

The above alternatives shall be considered in light of the improving or deteriorating state of the economy of the individual's labor market area, the existing and reasonably foreseeable level of demand in the various occupations for which the individual is reasonably fitted, the wages being offered at that time, and other similar factors.

(c) An individual may be considered available for work for any week in which the individual has met the work search requirements of this section.

- (1) The individual shall make a minimum of three work search contacts each week, unless otherwise provided in this subsection.
- (2) The individual shall maintain a record of all work search contacts and may be required to submit such record upon request by the department.
- (3) Activities that constitute work search contacts, include but are not limited to:
 - (A) Registering for work at the employment office in accordance with section 383-29(a)(2), Hawaii Revised Statutes;
 - (B) Registering for work with a private employment agency or placement facility of a school, college or university;
 - (C) Applying for work, submitting resumes or interviewing with potential employers;
 - (D) Utilizing employment resources available at employment offices that identify the individual's skills in occupations in demand in the local labor market area;
 - (E) Attending job search seminars, job clubs, or other employment workshops that offer instruction in improving an individual's skills for seeking and obtaining employment; and
 - (F) Conducting other work search activities which are made by individuals in the same or similar occupation who are genuinely interested in obtaining work or as may be provided by the department.
- (4) An individual shall be exempted from the work search requirements of this subsection, or be subject to modified work search requirements as authorized by the department if the individual:
 - (A) is waived from registration for work requirements under section 12-5-31;
 - (B) is participating in approved training under section 383-29(e), Hawaii Revised Statutes;
 - (C) has otherwise been instructed by the department to be conducting work search activities in a manner consistent with and reflective of local area policies and local labor market opportunities; or
 - (D) for any other reason that has been determined by the department to meet work search requirements that are consistent with industry practices or are customary for the occupation.
- (5) An individual who fails to comply with the requirements of this subsection may

be considered not available for work and be held ineligible for benefits.

(d) For the waiver, due to illness or disability, of the availability requirement of section 383-29(a)(3), Hawaii Revised Statutes, to apply, an individual shall have registered for work, as provided by law and this chapter, prior to the onset of the illness or disability, and shall have filed an initial claim to establish that individual's eligibility for benefits prior to the beginning of the illness or disability. Illness or disability shall be evidenced by a physician's certificate.

If the incapacitated individual is offered work which would have been suitable prior to the individual's illness or disability and the individual cannot accept such work because of the individual's illness or disability, the waiver shall not apply.

"Offered work" as used in this subsection means a direct offer of work by an employer or employer's authorized representative, or referral to a job or a call-in made by the employment office for purposes of referral to suitable work

(e) Notwithstanding any other provisions in this section, an individual shall not be deemed able and available for work during any week with respect to which the individual is receiving or has received compensation for temporary partial or temporary total disability under the workers' compensation law of any state. [Eff. 6/26/81; am 10/12/00; am 11/6/06] (Auth: HRS ' 383-92) (Imp: HRS ' 383-29(a)(3))

' 12-5-36 to 12-5-38 (Reserved)

' 12-5-39 Denial of benefits to employees of educational institutions and governmental agencies during specific periods. (a) As used in section 383-29(b), Hawaii Revised Statutes, and this section:

- (1) Individuals employed in an "instructional" capacity include persons engaged in teaching students in formal classrooms, and individuals who teach in less formal arrangements, such as tutorial relationships and direction of students in independent research and learning;
- (2) Individuals employed in a "research" capacity include those who direct a research project and the staff directly engaged in gathering, correlating, and evaluating information and making findings. The individuals who provide supportive services for the research, such as typists, clerks, and electricians engaged in wiring the information processing equipment under the direction of the research staff, are not included in this term;
- (3) Individuals employed in a "principal administrative" capacity include officers of the institution (such as the president), the board of directors, business managers, deans, associate deans, public relations directors, comptrollers, development officers, chief librarians, registrars, and individuals who, although they may lack official titles, actually perform in similar functions. The duties performed by the individual rather than the title that person holds shall determine whether or not that person is included in this term;
- (4) "Service in any other capacity" includes all other services performed by employees of an educational institution or governmental agency such as the school secretary, office clerical staff, school lunch aides, cafeteria workers, school health aides, school security aides, and individuals who provide supportive services;
- (5) "Professional capacity" includes the individuals engaged in instructional, research, and principal administrative capacities;

- (6) "Nonprofessional capacity" includes the individuals engaged in performing "services in any other capacity" in an educational institution or governmental agency;
- (7) "Institution of education" means an institution that:
 - (A) Offers an organized course of study or training designed to transfer knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher to participants, trainees, or students. Such course of study or training may be academic, technical, trade, or preparation for gainful employment in a recognized occupation; and
 - (B) Is approved, licensed or issued a permit to operate as a school by the State Department of Education, Board of Education, or other government agency that is authorized within the State to approve, license or issue permits for the operation of schools such as private, public, profit making, and non-profit institutions, whether the institutions are pre-schools, primary schools, secondary schools, preparatory or vocational schools, colleges, universities, junior or community colleges, or similar institutions within or without the State;
- (8) "Sabbatical leave" includes any paid leave whether for professional improvement or other leave, where both the leave and the individual's resumption of work upon termination of the leave are provided for in the contract;
- (9) "Established and customary vacation or recess for a holiday" includes the Christmas or spring break, or similar periods within an academic year or term, when that period has been placed on the school calendar for that school year;
- (10) "Governmental agency," as used in this section and section 383-29(b), Hawaii Revised Statutes, includes an educational service agency and any federal, state, county, or other type of governmental agency which is established and operated exclusively for the purpose of providing instructional, research, or principal administrative services, or any other services to one or more educational institutions;
- (11) The "contract" which an individual has with an institution of education or governmental agency may be written, oral, implied, or expressed. In some cases, the contract may be merely a notice of appointment or reappointment or a letter indicating that the individual's services have been accepted. Generally, as long as there is a mutual commitment between an individual and a particular institution, the individual's services shall be considered covered by a contract;
- (12) "Reasonable assurance" means a written, oral, implied agreement that the individual will perform services or provides the individual with a realistic expectation of employment in an institution of education or governmental agency in an instructional, research, principal administrative, or any other capacity during the ensuing academic year or term. Notification from the institution of education or governmental agency to the individual of reemployment for the next academic year or term shall constitute reasonable assurance, provided there are sufficient facts to show that the individual can realistically expect to be reemployed during the ensuing academic year or term, including, but not limited to:
 - (A) The existence of a job opening;
 - (B) The nature and effect of any factors, such as:

- (i) Future enrollment;
 - (ii) Availability of funding;
 - (iii) Vacancies due to absences of regular employees; or
 - (iv) The individual=s past employment with an institution of education or governmental agency;
- (C) The employer=s practice or procedure in assignment and offering work to its employees; and
- (D) Any other factors to be considered in determining realistic expectation for reemployment; and
- (13) "Opportunity to perform such services" means an actual chance to perform these services for an institution of education or a governmental agency in the academic year or the term that follows. The offer shall specify the conditions under which the offer of work was made to the individual and upon which reasonable assurance was previously given. If it is established that the offer was not bona fide, as may be indicated by a dismissal shortly after the individual begins performance of the required service, the individual may be eligible for retroactive payment of benefits.
- (b) When an initial claim is filed by an individual, the institution of education or governmental agency shall provide the department with a statement as to whether or not reasonable assurance of employment has been given to the individual for the ensuing academic year or term and specific facts in support of the reasonable assurance, such as:
- (1) The conditions of prospective work, including:
 - (A) Job title;
 - (B) The duties;
 - (C) The hours of work;
 - (D) The salary; and
 - (E) The dates of employment; and
 - (2) Any other information necessary for a proper determination of a claim for benefits.
 - (c) If it has been determined by the department that a denial is applicable under section 383-29(b), Hawaii Revised Statutes, benefits shall not be paid during:
 - (1) The interval between two successive academic years, such as the summer vacation period;
 - (2) Any period or term within an institution's academic year which occurs between two regular terms, whether or not successive, and during which the individual is not required to perform services in a professional capacity. For example, in the case of an individual whose contracts for each of two twelve-month periods require that individual to teach during the spring, summer, and winter terms in an institution with a four-term academic year and do not require that individual to perform such services during the intervening fall term, no benefits may be paid to that individual during the fall term. The fall term would be the period "between two regular terms, whether or not successive";
 - (3) Sabbatical leave;
 - (4) The period between the end of the sabbatical leave and the beginning of the next academic year or term, and the period between the end of the preceding academic year or term and the beginning of the sabbatical leave;
 - (5) An established and customary vacation or recess for a holiday which falls within an academic year or term; or

- (6) Any period during an established and customary vacation or recess for a holiday within an academic term when an employee in an educational institution working in one capacity receives reasonable assurance of continued employment in another capacity after the established and customary vacation or recess for a holiday within the academic term. For example, if an individual performed services in a professional capacity in the academic period prior to the established and customary vacation or recess for a holiday for an educational institution and will be returning to an educational institution in a nonprofessional capacity in the academic period following the established and customary vacation or recess for a holiday, the denial would apply.
- (d) The denial of benefits shall not apply during the applicable period between two academic terms or during an established or customary vacation or recess for a holiday period:
 - (1) If the individual performed services in an institution of education or governmental agency in the first academic period and has a contract or reasonable assurance of employment with a different type of employer in the ensuing academic period. The denial would not apply, for example, where an individual was employed by an educational institution in the first academic period and accepted employment with a governmental agency or a non-educational employer in the second academic period; or
 - (2) If the individual has wages from other covered employment and meets all eligibility requirements. The individual may be paid benefits for the periods between academic years, terms or semesters, or within academic periods based on the individual's covered wages from employers other than an institution of education or governmental agency; or
 - (3) If the economic terms and conditions of the job offered in the second period are substantially less than the terms and conditions for the job in the first period. The denial would apply, for example, where a full-time teacher is offered a one-year contract as a long-term substitute teacher at the same rate of pay and daily employment is guaranteed for the term of the contract. The denial would not apply, for example, where a full-time teacher during the first academic year is offered a contract to teach only one hour per day or is placed on the on-call list during the second academic year. [Eff. 6/26/81; am 12/31/84; am 9/23/89; am 10/12/00; am 11/6/06] (Auth: HRS ' 383-92) (Imp: HRS ' 383-29(b))

' ' 12-5-40 to 12-5-42 (Reserved)

' 12-5-43 Vocational training or retraining course. (a) For the purposes of section 383-29(e), Hawaii Revised Statutes, and this section, a "vocational training or retraining course" means a technical training course, including field work or apprenticeship-type situations, which is designed to prepare individuals for gainful employment in recognized or new occupations then in existence, or expected to exist in the immediate future. "Vocational training or retraining course" is a technical course in job preparation rather than an academic course and includes training designed to enhance the employability of individuals by upgrading basic skills through remedial or English-as-a-second-language courses. The term "vocational training or retraining course" does not include courses of instruction for an individual which are primarily intended to lead to a baccalaureate or higher degree, or training that has as its purpose the preparation of

individuals for employment which requires a baccalaureate or higher degree from institutions of higher education.

(b) Generally, an individual possessing skills in a higher rated occupation shall not receive approval of training if that individual undertakes a program of instruction in a lower skill level occupation. However, consideration shall be given to extenuating factors such as the individual's inability to continue in the individual's usual occupation because of illness or injury and the individual's potential to adapt to a new line of work after a reasonable period of instruction.

(c) Individuals claiming benefits and receiving approved vocational training shall not be deemed unavailable for work during short school vacations such as Easter, Thanksgiving, Christmas, and between school semesters during the regular school year. When, however, the training course is interrupted by a summer vacation, the individual shall be eligible for benefits only if the individual is able and available for work as provided in Section 12-5-35.

(d) During a period of approved training, an individual shall be deemed to have good cause for not applying for or accepting suitable employment if such action would require the individual to terminate that individual's training prematurely.

(e) Benefits shall be payable for any period in which the trainee demonstrates satisfactory progress and attendance in an approved vocational training or retraining course as determined by the training facility. [Eff. 6/26/81; am 10/12/00] (Auth: HRS ' 383-92) (Imp: HRS ' 383-29(e))

' ' 12-5-44 to 12-5-46 (Reserved)

' 12-5-47 Voluntary separation. (a) An individual shall be disqualified for benefits for voluntarily leaving work without good cause.

(b) A separation is a voluntary leaving or quitting when the facts and circumstances demonstrate that a claimant is the "moving party" in the termination of an employment relationship.

(c) Generally, a leaving of work is considered to be for good cause where it is for a real, substantial, or compelling reason, or a reason which would cause a reasonable and prudent worker, genuinely and sincerely desirous of maintaining employment, to take similar action. Such a worker is expected to try reasonable alternatives before terminating the employment relationship.

Good cause for leaving employment may be found where there is:

- (1) Change in working conditions and the change is prejudicial or detrimental to the health, safety, or morals of the individual;
- (2) Change in terms and conditions of employment, including, but not limited to: change in rate of pay, position or grade, duties, days of work, or hours of work;
- (3) Discrimination which violates federal or state laws regarding equal employment opportunity practices;
- (4) Change in the individual's marital or domestic status;
- (5) Acceptance of a definite, firm offer made of other employment where the offer is subsequently withdrawn and the former employer refuses to rehire the individual;
- (6) Retirement under a mandatory requirement imposed by a collective bargaining agreement;
- (7) Evidence that the individual was a victim of domestic or sexual violence, including any circumstance which causes a reasonable person to believe that other available

alternatives, such as a leave of absence, a transfer of jobs, or an alternate work schedule, would not be sufficient to guarantee the safety of the individual and that separation from employment was necessary to address the resulting physical and psychological effects, to seek or reside in an emergency shelter, or to avoid future domestic or sexual violence. Such evidence includes police records, court records, statements from the individual, a volunteer of a victim services organization, the individual's attorney or advocate, a member of the clergy, medical or other professional from whom the individual has sought assistance related to the domestic or sexual violence, or other corroborating evidence. As used in this subsection, "domestic or sexual violence" includes domestic abuse, sexual assault, or stalking;
or

(8) Any other factor relevant to a determination of good cause.

(d) An owner-employee of a corporation who brings about the owner-employee's unemployment by divesting ownership, leasing the business interest, terminating the business or by other similar actions where the person is the "moving party" in terminating the employment relationship, voluntarily leaves employment. Benefits may be payable to such individuals upon showing of good cause. As used in this subsection:

(1) An "owner-employee" means a person who is a shareholder, and director or officer, or both, who exercises a substantial degree of control over the direction of corporate activities, including the decision to dissolve the corporation; and

(2) "Good cause" includes but is not limited to financial difficulties such as bankruptcy proceedings, or long-term or considerable financial loss. [Eff. 6/26/81; am 12/31/84; am 11/6/06] (Auth: HRS ' 383-92) (Imp: HRS ' 383-30(1))

' 12-5-48 to 12-5-50 (Reserved)

' 12-5-51 Suspension or discharge for misconduct. (a) A discharge occurs when an employer is the "moving party" in the termination of the employment relationship.

(b) A suspension occurs when the employer takes action to refuse work and remuneration to an employee without terminating the employment relationship.

(c) Misconduct connected with work consists of actions which show a wilful or wanton disregard of the employer's interests, such as deliberate violations of or deliberate disregard of the standards of behavior which the employer has a right to expect of an employee, or carelessness, or negligence of such a degree or recurrence as to show wrongful intent or evil design. Mere inefficiency, unsatisfactory conduct, poor performance because of inability or incapacity, isolated instances of ordinary negligence or inadvertence, or good-faith errors in judgment or discretion are not misconduct. The misconduct shall be related to the work of the individual or the individual's status as an employee.

(d) In determining whether an individual's act constituted "misconduct" the department shall consider any relevant evidence presented which relates to:

- (1) Employee's reasons for the act or omission, and efforts to avoid the act or failure to act;
- (2) The relevant circumstances of the case and any causative effect therefrom upon the employee's actions;
- (3) The nature and importance to the employer of the offended interest of the employer;
- (4) Any lawful and reasonable company policy or custom;
- (5) Employer's actions to curtail or prevent, if possible, the objectionable conduct; and

(6) The nature of the act or failure to act.
(e) Situations where misconduct may be found include, but are not limited to, the following where the evidence demonstrates:

- (1) Unexcused absence or recurring unexcused tardiness; or
- (2) Altercation at work; or
- (3) Material false representations by the employee to the employer; or
- (4) Employee's gross neglect of duty; or
- (5) Employee's wilful disobedience of employer's directives or employee's insubordination; or
- (6) Intentional conversion of employer's property by the employee; or
- (7) Employee's unauthorized use of intoxicants on the job; or
- (8) Employee's wilful and substantial abuse of the employer's equipment or property. [Eff. 6/26/81] (Auth: HRS ' 383-92) (Imp: HRS ' 383-30(2))

' ' 12-5-52 to 12-5-54 (Reserved)

' 12-5-55 Failure to apply for work. (a) A claimant shall be disqualified under section 383-30(3), Hawaii Revised Statutes, if:

- (1) The claimant was offered employment or was directed to apply for employment by a public employment office;
 - (2) The prospective employment was suitable;
 - (3) The offer was refused or the claimant failed to apply; and
 - (4) The refusal or failure to apply was without good cause.
- (b) An offer of work or referral to employment shall be considered properly made

when:

- (1) At the time the offer was made or referral was given, a job opening actually existed or the prospective employer made a firm commitment to hire the claimant for a future job vacancy;
- (2) The claimant knew and understood that an offer or referral was being made;
- (3) The claimant was given sufficient information concerning the conditions of the job such as, but not limited to, the duties, location of work, hours of work, wages, working conditions, equipment needed, and union requirements if any, to determine the suitability of the offer or the referral; and
- (4) The claimant upon accepting a referral was given adequate information as to where and how to apply.

(c) Suitable work means work in the individual's usual occupation or work for which the individual is reasonably fitted. In determining whether an individual is reasonably fitted for a particular job, the department shall, among other factors, consider:

- (1) The degree of risk involved to the claimant's health, safety, and morals;
- (2) The claimant's physical fitness;
- (3) The claimant's prior training;
- (4) The claimant's experience;
- (5) The claimant's prior earnings;
- (6) The length of the claimant's unemployment;
- (7) The claimant's prospects for obtaining work in such claimant's customary occupation;

- (8) The distance of available work from the claimant's residence; and
- (9) The claimant's prospects for obtaining local work.
- (d) Notwithstanding any other provisions in this section, no work shall be deemed suitable and benefits shall not be denied under section 383-30(3), Hawaii Revised Statutes, to any otherwise eligible individual for refusing to accept new work under any of the conditions specified in section 383-30(3)(B), Hawaii Revised Statutes.
- (e) Failure to apply for work includes, but is not limited to:
 - (1) Failure to report to a public employment office on a call-in for a referral to work; or
 - (2) A refusal to accept a referral to work; or
 - (3) After acceptance of the referral, a refusal to apply to the employer for work.
- (f) Refusal of work offer includes, but is not limited to:
 - (1) Refusal of a job offer made by an employer or by someone having authority to hire for the employer; or
 - (2) After acceptance of a job offer made by an employer, claimant's failure to report to work for that employer on the first scheduled day of work.
- (g) The disqualification under section 383-30(3), Hawaii Revised Statutes, shall begin with the week in which the individual would have started work had the offer of suitable work by the employer been accepted by the individual. [Eff. 6/26/81; am 10/12/00] (Auth: HRS ' 383-92) (Imp: HRS ' 383-30(3))

' ' **12-5-56 to 12-5-58 (Reserved)**

' **12-5-59 REPEALED.** [R 9/23/89]

' ' **12-5-60 to 12-5-62 (Reserved)**

' **12-5-63 Interpretation of labor dispute.** As used in section 383-30(4), Hawaii Revised Statutes, "labor dispute" means any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or condition of employment regardless of whether the disputants stand in the proximate relation of employer and employee. [Eff. 6/26/81] (Auth: HRS ' 383-92) (Imp: HRS ' 383-30(4))

' ' **12-5-64 to 12-5-66 (Reserved)**

' **12-5-67 False statement or representation.** The administrative penalty under section 383-30(5), Hawaii Revised Statutes, shall be applied only if the department finds the following four elements:

- (1) There is a false statement, or misrepresentation or nondisclosure of a fact;
- (2) The fact falsely stated, misrepresented, or concealed is material;
- (3) The fact is falsely stated, misrepresented, or concealed knowingly; and
- (4) The false statement, misrepresentation, or concealment is for the purpose of obtaining benefits. [Eff. 6/26/81] (Auth: HRS ' 383-92) (Imp: HRS ' 383-30(5))

' **12-5-68 Retirement payments.** As used in section 383-23.5, Hawaii Revised Statutes:

- (1) "Is receiving a pension" means a pension actually received or a pension applied for and determined by the authorities responsible for administering the pension program to be payable in specified amounts for the same period that unemployment insurance benefits are payable and the individual is only awaiting receipt of those payments; provided that if the individual is subsequently determined ineligible for the pension, the individual shall be entitled to unemployment insurance benefits previously denied under section 383-23.5, Hawaii Revised Statutes, if the individual is otherwise eligible;
- (2) "One-half the prorated weekly amount" means the amount obtained by dividing the "prorated weekly amount" by two and round the quotient to the nearest cent;
- (3) "Pension (which shall include a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment)" includes:
 - (A) Primary social security old-age and disability retirement benefits;
 - (B) State and local government pension of all types;
 - (C) Federal civil service pensions, including disability pensions;
 - (D) Pensions from private profit or nonprofit employers;
 - (E) Military retirement and disability retirement pensions;
 - (F) Railroad retirement annuities; and
 - (G) Benefits derived from individual retirement accounts;
- (4) The term "pension" does not include:
 - (A) Disability compensation, such as:
 - (i) Military service-connected disability compensation payable under 38 U.S.C. chapter 11;
 - (ii) Temporary disability insurance;
 - (iii) Workers' compensation; and
 - (iv) Any other type of payment based on disability rather than on the previous work of the individual and which bears no direct relationship to the level of the individual's prior remuneration or length of past service;
 - (B) Payments received by an individual such as a survivor or widow which are not based on that individual's previous work, except that if that individual qualifies for primary social security retirement benefits based on the individual's previous work but elects to collect secondary social security retirement benefits as a widow or survivor based on the spouse's previous work, the individual's weekly benefit amount shall be reduced by the amount the individual would have received in primary social security old-age and disability retirement benefits; or
 - (C) Severance pay and separation payment; and
- (5) "Prorated weekly amount" means the amount obtained by multiplying the monthly amount of an individual's pension by twelve, dividing the product obtained thereby by fifty-two, and rounding the quotient to the nearest cent. [Eff. 12/31/84; am 10/12/00]
 (Auth: HRS ' 383-92) (Imp: HRS ' 383-23.5)

' ' 12-5-69 to 12-5-72 (Reserved)

SUBCHAPTER 3

CLAIMS FOR BENEFITS; DETERMINATIONS; APPEALS

Historical Note: Subchapter 3 is based substantially upon Regulation III of the Rules and Regulations of the Department of Labor and Industrial Relations relating to Claims for Benefits, Determinations and Appeals. [Eff. 7/15/51; am 7/5/53; am 10/1/55; am 12/16/76; R 6/26/81]

' **12-5-73 Definitions.** Unless the context otherwise requires, the following terms used in sections 12-5-77 to 12-5-93 shall have the following meaning:

"Additional claim" means a notice of new unemployment filed in accordance with section 12-5-81 at the beginning of a second or subsequent period of eligibility within a previously established benefit year when a break of one week or more has occurred in the claim series with intervening employment.

"Continued claim certification" means an application which certifies to the completion of a week of total, part-total, or partial unemployment either to satisfy a week of the waiting period requirement or to claim benefits for a week of unemployment;

"Initial claim" includes a new claim, additional claim, or a reopened claim;

"New claim" means the first claim filed in accordance with section 12-5-81 to request a determination of eligibility for benefits and a computation of the maximum benefits payable and the weekly rate at which benefits may be payable;

"Reopened claim" means an application for determination of eligibility for benefits and which certifies to the beginning date of a period of unemployment which would fall within a benefit year previously established for which a continued claim certification or series thereof may be filed, and which follows a break in a claim series previously established, due to illness, disqualification, unavailability, or failure to report for any reason other than re-employment. [Eff. 6/26/81; 10/12/00] (Auth: HRS ' 383-92) (Imp: HRS ' ' 383-29(a), 383-32)

' ' **12-5-74 to 12-5-76 (Reserved)**

' **12-5-77 Information to workers.** Every employer shall post and maintain, in accessible and conspicuous places in all establishments or places of business where workers perform their service, such information cards or posters as are provided for that purpose by the department. [Eff. 6/26/81] (Auth: HRS ' ' 383-31, 383-92) (Imp: HRS ' 383-31)

' ' **12-5-78 to 12-5-80 (Reserved)**

' **12-5-81 Filing of claims.** (a) A new claim may be filed by any individual who has become totally, part-totally, or partially unemployed. The new claim shall be filed in person, by mail, by telephone, or by using other alternative claims filing procedures as instructed or authorized by the department and in the manner prescribed by the department.

(b) The effective date of a claim for benefits shall be the first day of the week in which the claim is filed, except as otherwise provided in this section. The department may apply an earlier effective date if it can be shown to the satisfaction of the department that the individual's delay in filing is excusable for good cause, including but not limited to a reasonable

misunderstanding by the individual, misinformation from the department, unavailability of acceptable methods of claims filing provided by the department, or for transitional claims which are effective the day after the prior benefit year ends.

(c) 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, an individual shall not be required to file a claim earlier than two weeks from the date wages are paid for the claim period.

(d) The individual shall present, upon request, identification issued by a governmental agency which displays a photograph of the individual's face, the individual's signature, and the individual's social security account number, unless this requirement is waived by the department. If this identification is not available to the individual, the individual shall secure identification or submit to such reasonable identification procedures as the department may require, such as a notarized document attesting to the identity of the individual. If an individual fails or refuses to provide identification required in this subsection, the department may refuse to take action upon the individual's application, and unless proper identification is provided within two weeks, a determination to deny from the effective date of the initial claim shall be issued.

(e) Continued claim certifications for total or part-total unemployment benefits shall be filed as follows:

- (1) An individual may file a continued claim certification for the purpose of satisfying the waiting period requirement, or claiming benefits for a compensable week by certifying that:
 - (A) The individual was unemployed during the week for which the claim is filed;
 - (B) The individual has earned no wages except as stated;
 - (C) The individual was able to work and available for work;
 - (D) The individual has not refused a job referral or offer of work; and
 - (E) The individual shall provide such other relevant information as the department may require.
- (2) An individual shall file a continued claim certification 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.
- (3) The individual shall file continued claim certifications weekly or bi-weekly in accordance with paragraph (2). When deemed necessary by the department, the individual shall file continued claim certifications at such other intervals as the department shall require.
- (4) The continued claim certification shall be filed in the manner prescribed by the department not later than seven calendar days following the last day of the week, or the last day of the two-week period in the case of bi-weekly filing intervals, for which benefits or waiting week credit is claimed. For continued claims filed by mail, the postmark date of the envelope in which the claim was mailed shall determine the date of filing. For continued claim certifications filed by telephone, the date that the telephonic transaction was completed by the individual and accepted by the remote claims taking system shall determine the date of filing. The department may extend the time allowed for filing a continued claim certification if the failure to file the claim certification within the time allowed is excused for good cause as determined by the department. Good cause includes but is not limited to:
 - (A) Incapacitation of the individual; or

- (B) Failure to understand filing requirements.
- (5) If an individual fails to file continued claim certifications for benefits for two or more consecutive weeks in the manner prescribed by paragraph (4), the individual shall be required to file a reopened claim in the same manner prescribed by subsections (a) and (b) for new claims.
- (6) The department, upon showing of convenience or necessity, may transfer the individual to the office of the unemployment insurance division which has jurisdiction over the area in which the individual resides.
- (7) Individuals who temporarily leave the area in which they are currently filing for benefits and registered for work may file for not more than two consecutive weeks of benefits by telephone or by reporting in person to an unemployment insurance claims office serving the new area. The continued claims for benefits shall comply with the requirements in this subsection. If the individual remains in the new area for a longer period of time, an initial interstate claim should be filed. However, the requirements of this subsection may not apply if the individual is instructed or authorized to do otherwise by the department or the unemployment insurance claims office in the new area.

Failure to comply with this subsection, including the failure to provide relevant information as required, shall be considered a failure to file claims in accordance with section 383-29(a)(1), Hawaii Revised Statutes. Benefits shall be denied for the week in which the individual's failure to file occurs and continuing until the conditions of this subsection are met.

- (f) Additional claims for total and part-total benefits shall be filed as follows:
 - (1) After a series of claims for consecutive weeks of unemployment is broken by the employment of the individual, the individual, upon subsequent unemployment during the remainder of the benefit year previously established, shall file an additional claim in the manner prescribed by section 12-5-81(a) and (b) in order to begin a new series of claims, provided the unemployment is not partial unemployment.
 - (2) To file an additional claim, an individual shall:
 - (A) On the date the additional claim is filed, be unemployed and have separated from work;
 - (B) Be registered for work as prescribed by section 12-5-31;
 - (C) Complete and file with the department an additional claim form unless otherwise instructed or authorized by the department in accordance with section 12-5-81(a) and (b); and
 - (D) Furnish such information as the department may require.
- (g) Continued claim certifications for partial benefits shall be filed as follows:
 - (1) An individual may file a continued claim certification for partial 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 section 12-5-81(e)(1) not later than twenty-eight days from the end of the week for which the individual claims benefits; provided 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, four 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 four consecutive weeks, the individual shall be deemed totally unemployed.
- (3) Notwithstanding paragraph (2), the department may extend partial unemployment beyond four consecutive weeks of total unemployment under conditions including but not limited to:
 - (A) The individual is retained in an employer-employee relationship; and
 - (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.

(h) The initial claims of individuals who are affected by a mass separation may be taken as a group by the department. The term "mass separation" means a separation (permanently or for an indefinite period or for an expected duration of seven or more days) of fifty or more workers, employed in a single establishment, at or about the same time and for the same reason whether or not there is a severance of the employment relationship.

(i) An individual shall report in person as requested or provide information by mail, by telephone or as instructed by the department, to an office of the unemployment insurance division, to an itinerant point, or to a designated agency as instructed at such days and hours as required by the department for any of the following purposes:

- (1) Attending an eligibility benefit rights interview, unless the individual has waived, in writing and with the permission of the department, attendance at the interview;
- (2) Providing information at a periodic eligibility interview;
- (3) Providing information to determine or redetermine that individual's eligibility for benefit under chapter 383, Hawaii Revised Statutes;
- (4) Providing information to determine or redetermine that individual's liability for repayment of any overpaid benefits; or
- (5) Attending a worker profiling orientation or assessment in accordance with section 383-29(a)(6), Hawaii Revised Statutes.

Failure to comply with this subsection shall be considered a failure to file claims in accordance with section 383-29(a)(1), Hawaii Revised Statutes. Unless the individual's failure to comply is excused for good cause pursuant to subsection (j), benefits shall be denied beginning with the week in which the individual failed to comply as instructed and continuing until the conditions of this subsection are met.

(j) An individual's failure to report as scheduled or to provide information to the department for any of the purposes in subsection (i) may be excused for good cause. A Good cause@ means:

- (1) Illness or disability of the individual;
- (2) Keeping an appointment for a job interview;
- (3) Attending a funeral of a family member; and
- (4) Any other reason which would prevent a reasonable person from complying as directed. For the purpose of this subsection, "failure to comply" means a failure to report during the regular office hours of the unemployment insurance office on the scheduled day or a failure to provide information by a date specified by the department, except that with respect to an individual scheduled to report at an itinerant point or at a designated agency, failure to report means a failure to report

during the hours as instructed on the scheduled day.

(k) In using telephone, or other alternative or remote claims taking procedures to file a claim as prescribed by section 383-29(a)(1), Hawaii Revised Statutes, an individual may be required to establish a personal identification number (PIN) as instructed by the department. The PIN is confidential and the individual shall not disclose that PIN to anyone else unless authorized to do so by the department. Each individual shall be responsible for all claims filed under the individual's social security number and PIN. [Eff. 6/26/81; am 12/31/84; am 3/10/86; am 10/12/00; am 11/6/06] (Auth: HRS ' 383-92) (Imp: HRS ' ' 383-29(a), 383-32)

' ' 12-5-82 to 12-5-84 (Reserved)

' 12-5-85 Recovery of benefits paid. Any person who has received any amount as benefits to which that person was not entitled shall be liable for such amount unless the overpayment was received without fault on the part of the recipient and its recovery would be against equity and good conscience.

(1) "Fault" shall be defined as:

- (A) A material statement made by the individual which the individual knew or should have known to be incorrect; or
- (B) Failure to furnish information which the individual knew or should have known to be material; or
- (C) Acceptance of a payment which the individual either knew or reasonably could have been expected to know was incorrect.

(2) In determining whether recovery of overpayments would be against equity and good conscience, the factors which the department may consider include, but are not limited to:

- (A) Whether notice of a redetermination was given to the claimant as required by section 383-44(a), Hawaii Revised Statutes;
- (B) Hardship to the claimant that the repayment may impose; and
- (C) The effect, if any, that repayment will have upon the fulfillment of the objectives of the program. [Eff. 6/26/81] (Auth: HRS ' 383-92) (Imp: HRS ' 383-44(a))

' ' 12-5-86 to 12-5-88 (Reserved)

' 12-5-89 Determinations. (a) An unemployed individual may file an application for a determination of insured status in accordance with this chapter. A claimant may withdraw an application for a determination of insured status at any time prior to the time at which a valid claim is established by the department. If a valid claim is established, the claim may still be withdrawn if benefits have not been paid, unless otherwise prohibited by federal law. Such a request shall be in writing. Upon approval of the request and if the base period employers have previously been notified that the individual has claimed benefits, the department shall mail a copy of the written approval to each employer in the base period of the individual claiming benefits to give notice of the cancellation of the claim. Any determination rendered before the claim is withdrawn shall remain in effect and shall not be voided by the withdrawal of the claim. A determination of disqualification requiring subsequent earnings to requalify the individual shall apply to the weekly benefit amount of the individual's new claim.

(b) A determination that an individual is an insured worker shall remain in effect

throughout the benefit year for which it is made, unless modified in accordance with section 383-40, Hawaii Revised Statutes.

(c) When an insured worker files an initial claim or a continued claim certification, the department shall determine whether the worker has met the conditions of section 383-29, Hawaii Revised Statutes, and whether the worker is disqualified under section 383-30, Hawaii Revised Statutes.

(d) A benefit payment shall be deemed a determination and a notice to the claimant that claimant is eligible to receive the payment for the period covered thereby. The right to reconsider the determination is reserved to the department by section 383-34, Hawaii Revised Statutes.

(e) Notice of determination shall be given as follows:

- (1) A notice of a determination of insured status shall be promptly furnished to the claimant. The notice shall include a statement as to whether the claimant is an insured worker, the amount of wages for insured work paid to the claimant by each employer during the claimant's base period, and the employers by whom such wages were paid. For a claimant who is determined insured, the notice shall also state the claimant's benefit year, weekly benefit amount, and the maximum amount of benefits that may be paid to the claimant for the claimant's unemployment during the year. For a claimant who is determined not insured, the notice shall include the reason for the determination.
- (2) A notice of a determination regarding a claimant's insured status shall be given by delivery thereof or by mailing to each employer by whom the claimant was employed during the claimant's base period. The notice of determination shall include the percentage of benefits paid that will be charged or not charged in accordance with section 383-65, Hawaii Revised Statutes, based on the job separation information provided by the claimant to the department. The employer may file a request for reconsideration or an appeal of the determination notice in accordance with section 383-34 or 383-38, Hawaii Revised Statutes.
- (3) If the department determines pursuant to sections 383-29 and 383-30, Hawaii Revised Statutes, that a claimant is not eligible to receive waiting-week credit or benefits for any week or weeks, the department shall promptly furnish to the claimant written notice of the determination together with the reasons therefore and of the period covered by such determination. Any employing unit which employed a claimant shall be entitled to receive a written notice of a determination made pursuant to section 383-30, Hawaii Revised Statutes, only if it has been provided an opportunity to furnish information which may affect the claimant's right to waiting week credit or benefits for any week of unemployment prior to the determination of eligibility.
- (4) Written notice of any determination to which any party is entitled shall be given promptly by delivery in person or by mail to the party's last known address. Each notice shall include, in addition to stating the decision and reasons therefor, a notice specifying the party's right of appeal. The notice of right of appeal shall state clearly the place and manner for taking an appeal from the determination and the period within which an appeal may be taken.
- (5) A determination of insured status or of eligibility becomes final with respect to any interested party ten calendar days after notice is mailed or handed to the party

unless within that period, the party files an application for reconsideration or an appeal to the referee, except that, pursuant to section 383-34, Hawaii Revised Statutes, the department, on its own motion, may reconsider the determination within the time specified by such section.

(f) Written notice of any redetermination shall be given promptly in the same manner and to the same parties as provided by this section for determination. A redetermination shall be deemed final, unless a party entitled to notice thereof files an appeal within ten calendar days, or within thirty calendar days if the referee extends for good cause the period within which an appeal may be filed, after the notice was mailed to the party's last known address or otherwise delivered to that party.

(g) Upon a showing by the employer that the employer can provide information which may affect the claimant's right to waiting week credit or benefits for any week of unemployment, the employer may request an opportunity to appear in person at a pre-determination hearing to present such relevant information. Upon such a request for a hearing, the department shall inform the employer as to the date, time, and place of the hearing.

A claimant shall be given an opportunity to respond to any information provided by the employer at such hearing. [Eff. 6/26/81; am 3/10/86; am 9/23/89; am 10/12/00; am 11/6/06] (Auth: HRS ' 383-92) (Imp: HRS ' ' 383-29, 383-30, 383-32, 383-34, 383-36, 383-40)

' ' 12-5-90 to 12-5-92 (Reserved)

' 12-5-93 Benefits appeals. (a) The term "party" or "parties" as used herein shall include the department, claimant, and such employing units as are entitled to notice of determination upon a claim.

(b) Any appeal to the referee from a claim determination or redetermination shall be filed in writing at the unemployment insurance office in the county where the claimant resides or in which the claimant was last employed. Deposit of an appeal in the mail, addressed to such office, and a postmark date thereof within the time allowed by law for filing appeals shall be deemed a timely filing.

(c) Written notice of hearing, specifying the time and place thereof and those questions which are known to be in dispute, shall be given or mailed to the parties fifteen or more days before the hearing.

(d) When deemed necessary by the referee, the parties may be directed in writing to appear before the referee for a prehearing conference to consider:

- (1) Simplification of the issues;
- (2) Stipulation by the parties, subject to the approval of the referee, as to all or a portion of the facts involved in the proceedings, or the admission of documents, or both; and
- (3) Such other matters as may aid in the disposition of the proceedings.

The referee may make an order which recites the action taken at the conference, the agreements made by the parties as to any of the matters considered and which limit the issues for hearing to those not disposed of by admissions or agreements of parties. The order, when entered, shall control the subsequent course of the proceeding unless modified at the hearing to prevent manifest injustice. If requested by either party, the order shall be made and entered. The referee may direct either party to prepare the order.

(e) Hearings shall be scheduled, held, and conducted as follows:

- (1) Every hearing and other proceedings which are held under this section shall be scheduled and heard promptly. In the scheduling of proceedings in any case, consideration shall be given to the prompt disposition of any appeal, the daily hours and days of the week established for conducting proceedings on appeals, and the regular places of hearing established within the State. Hearings shall be held in the county in which the appeal is filed except as follows: (i) where the office of unemployment compensation appeals determines that it is necessary to hold the hearing in a county other than the county in which the appeal is filed in order to conduct a fair and impartial hearing; or (ii) with the consent of the parties. Where the hearing is to be held outside of the county in which the appeal is filed, the parties shall be provided with notice of such hearing and shall be provided with the opportunity to object to such hearing. Failure to object to such hearing within the time specified in the notice shall be deemed consent by the parties to such hearing.
- (2) A proceeding in any case may be rescheduled at the request of an interested party for reasonable cause.
- (3) A single hearing with all parties appearing at the same time shall be held whenever possible. Hearings may be held with the parties appearing in person, by telephone, or by other suitable communication device approved by the office of unemployment compensation appeals. Appearances by the parties in a case may be by a combination of the foregoing when one or more of the parties is out of the State, or the parties are in different intrastate locations. Where it is impracticable to hold a single hearing, the evidence of the employer, the claimant, or witnesses may be taken separately by the same or different referees upon due notice to all interested parties. The decision shall be based upon the complete record.
- (4) The proceedings shall be informal, fair, and impartial and shall be conducted in such manner as may be best suited to protect the rights of all parties.
- (5) Hearings shall be closed, except upon consent of the appearing parties.
- (6) Prior to the opening of the hearing, the referee shall identify himself or herself to the parties, ascertain the identity of the parties, and insure that the parties have an opportunity to examine the case record. All other communication between any party and the referee, concerning a case before that referee, shall be recorded and made a part of the record.
- (7) The parties appearing for a hearing before the referee shall be provided written instructions which shall be included in the record, stating the procedures which are to be followed in the conduct of the hearing.
- (8) The referee shall open the hearings by ascertaining and summarizing the issue or issues involved in the appeal.
- (9) The parties and their representatives may examine or cross-examine witnesses, inspect documents, and explain or rebut any evidence.
- (10) An opportunity to present argument shall be afforded the parties, which argument shall be made part of the record.
- (11) Where a party is not represented by counsel or other agent, the referee shall give that party every assistance that does not interfere with the impartial

- discharge of the referee's official duties.
- (12) The referee may examine each party or witness to such extent as the referee deems necessary.
 - (13) All oral testimony shall be under oath or affirmation and shall be recorded.
 - (14) Any issue involved in the claim may be considered and passed upon even though such issue was not set forth as a ground for appeal. Issues not set forth in the notice of hearing, however, shall not be heard or decided without first giving notice to the parties. In providing notice to the parties of a new issue, the referee shall explain that issue to the parties and advise them of their right to a recess, if they so desire, in order to prepare for a hearing upon the new issue. If the parties are willing to continue without a recess and to waive notice as required in subsection (c), the referee may proceed to hear the new issue.
 - (15) Oral or written evidence of any nature, whether or not conforming to the legal rules of evidence, may be accepted. Any official record of the department, including reports submitted in connection with the administration of the employment security law, may be included in the record; provided, however, that the parties are given an opportunity to examine and refute the same.
 - (16) The parties may, subject to the approval of the referee, enter into stipulation as to all or a portion of the facts involved in the proceedings. The referee may make a decision on the basis of the information contained in such stipulations or may take such further testimony or receive such further evidence as the referee deems necessary.
 - (17) Upon a showing of necessity by any party for the issuance of a subpoena to compel the attendance of a witness or the production of accounts, records, and documents at any hearing, a subpoena shall be issued by the referee.
 - (18) Witnesses subpoenaed for any hearing before the referee shall be paid witness and mileage fees by the department in accordance with section 383-99, Hawaii Revised Statutes.
 - (19) Under no circumstances shall parties to a hearing be granted witness fees. Fees for subpoenaed witnesses shall be claimed within ten days from the date of the hearing, certified to by the witness on appropriate forms and approved by the referee.
 - (20) Information from records of the department shall be furnished to any party, to the extent necessary for the proper presentation of that party's case. All requests for such information shall state as clearly as possible the nature of the information desired and shall, unless made at a hearing, be in writing.
 - (21) Any hearing before the referee shall be continued when, in the judgment of the referee, such action is necessary to afford the parties a reasonable opportunity for a fair hearing. In the event of any such action, oral or written notice of the subsequent time and place of the continued hearing shall be given the parties or their representatives.
 - (22) Failure of a party to appear at a hearing shall not result in the decision being automatically rendered against that party. Unless there appears to be good reason for continuing the hearing, the referee shall render a decision on the basis of whatever evidence is properly before the referee. An application for

reopening filed by any such party in accordance with this section shall be granted if it appears to the referee that the party has shown good cause for failure to attend.

- (23) Counsel or other duly authorized agent representing a party may appear at any hearing or take any other action which the party might take under this section. Claimants authorizing a counsel or agent to appear in lieu of the claimant shall submit the authorization in writing not later than the time of the hearing. The referee may for cause bar any person from representing a party, in which event such action shall be set out in the record of the proceedings.

(f) The decisions of the referees shall be in writing and shall be signed by the referee. They shall set forth the findings of fact, reasons for the decision, and the decision, and shall be accompanied by a notice specifying the parties' appeal rights from the decision.

(g) A file of referee decisions shall be kept in the office of unemployment compensation appeals. Such decisions shall be open for inspection, but the identity of the parties or witnesses shall not be revealed.

(h) Any application for reopening shall be in writing and may be filed in any unemployment insurance office within the State or with the office of unemployment compensation appeals. The referee may grant or deny the application without hearing or may notify the parties to appear at a designated place and time for argument on the application.

(i) If an application to reopen is granted, or if the referee reopens the decision on the referee's own motion, the referee shall schedule the matter for further hearing and notify the parties to the appeal in the manner provided in this section for notice of hearings. The referee may reconsider the decision upon the evidence already in the record or take such additional evidence as the referee deems necessary in order to decide the case and give the parties a fair hearing. The hearing shall be conducted in the manner provided in this section for conduct of hearing.

(j) A referee's decision shall be reopened only once by a particular party. A denial of an application to reopen the decision shall not be subject to further reopening. Thereafter, persons who have objection to the decision may obtain judicial review in the circuit court as provided in section 383-41, Hawaii Revised Statutes.

(k) In the event that an application for reopening is denied, the reasons for the denial shall be stated.

(l) The time to initiate a judicial review shall run from the mailing or, if not mailed, delivery date of the notice of further decision when a decision has been reopened, or the mailing or, if not mailed, delivery date of a denial of an application to reopen an appeals referee's decision.

(m) A referee shall be disqualified under the following circumstances:

- (1) The referee shall not participate in the hearing of an appeal in which the referee has any direct or indirect interest in the claim or the issues involved in the claim, or in which the referee's relative by affinity or consanguinity within the third degree is interested. The director shall be notified by the referee of any such disqualification.
- (2) Whenever any party files with the director an affidavit that the referee has a personal bias or prejudice against such party or in favor of any opposite party, the affidavit shall state the facts and the reason for the belief that bias or prejudice exists and shall be filed before the hearing, or good cause shall be

shown for the failure to file it within such time. The director or duly authorized representative of the director may disqualify the referee from proceeding in such matter where the director finds the issue of the referee's impartiality is valid and a party's opportunity for a fair hearing is not possible. The referee may disqualify himself or herself by filing with the director a certificate that the referee deems himself or herself unable for any reason to preside with absolute impartiality in a pending matter. [Eff. 6/26/81; am 12/31/84; am 7/16/98] (Auth: HRS ' ' 383-39, 383-92) (Imp: HRS ' ' 383-37 to 383-42)

' ' 12-5-94 to 12-5-98 (Reserved)

SUBCHAPTER 4

COMBINING OF WAGE CREDITS

Historical Note: Subchapter 4 is based substantially upon Regulation IV of the Rules and Regulations of the Department of Labor and Industrial Relations relating to Combining of Wage Credits. [Eff. 12/16/76; R 6/26/81]

' **12-5-99 Definitions.** Unless the context otherwise requires, the following terms used in sections 12-5-103 to 12-5-123 shall have the following meanings:

"Base period" means the base period applicable under the unemployment insurance law of the paying state;

"Benefit year" means the benefit year applicable under the unemployment insurance law of the paying state;

"Combined-wage claim" means a claim filed under this arrangement;

"Combined-wage claimant" means a claimant who has covered wages under the unemployment insurance laws of more than one state and who has filed a claim under this arrangement;

"Employment" means all services which are covered under the unemployment insurance law of a state, whether expressed in terms of weeks of work or otherwise;

"Paying state" means:

- (1) The state in which a combined-wage claimant files a combined-wage claim, if the claimant qualifies for unemployment benefits in that state on the basis of combined employment and wages; or
- (2) If the state in which a combined-wage claim is filed is not the paying state under the criterion set forth above in paragraph (1), or if the combined-wage claim is filed in Canada or the Virgin Islands, then the state where the combined-wage claimant was last employed in covered employment among the states in which the claimant qualifies for unemployment benefits on the basis of combined employment and wages;

"State" includes the states of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico;

"State agency" means the agency which administers the unemployment insurance law of a state;

"Secretary" means the Secretary of Labor of the United States;

"Transferring state" means a state in which a combined-wage claimant has covered employment and wages in the base period of a paying state, which transfers such employment and wages to the paying state for its use in determining the benefit rights of such claimant under its law;

"Wages" means all remuneration for "employment" as defined in this section. [Eff. 6/26/81]
(Auth: HRS ' 383-92) (Imp: HRS ' ' 383-92, 383-106)

' **12-5-100 to 12-5-102 (Reserved)**

' **12-5-103 Election to file a combined-wage claim.** (a) An unemployed individual may elect to file a claim under this arrangement if that individual has covered employment under

the unemployment insurance laws of two or more states. The individual may not file a claim under this arrangement if the individual has a current benefit year with available benefits under any state or federal law.

(b) For the purpose of this arrangement, a claimant shall not be considered to have unused benefit rights under a law if:

(1) The claimant's rights to such benefits have been postponed for an indefinite period or for the entire period in which benefits would otherwise be payable; or

(2) Benefits are affected by the application of a seasonal restriction.

(c) If an individual elects to file a combined-wage claim, all wages and employment in all states in which the individual worked during the base period of the paying state shall be included in the combining, except wages and employment which are not transferrable.

(d) A combined-wage claimant may withdraw a combined-wage claim within the period prescribed by the law of the paying state for filing an appeal, protest, or request for redetermination from the monetary determination of a combined-wage claim. Such claimant shall, however, either:

(1) Repay in full any benefits paid to such claimant under this arrangement; or

(2) Authorize the state(s) against which such claimant claims benefits to withhold and forward to the paying state a sum sufficient to repay such benefits.

(e) If the combined-wage claimant files a combined-wage claim in a state other than the paying state, such claimant shall do so in accordance with the interstate benefit payment plan. [Eff. 6/26/81] (Auth: HRS ' 383-92) (Imp: HRS ' ' 383-92, 383-106)

' ' 12-5-104 to 12-5-106 (Reserved)

' 12-5-107 Responsibility of the paying state; transfer of employment and wages; payment of benefits. (a) The paying state shall request the transfer of a combined-wage claimant's employment and wages in all states during its base period, and shall determine the combined-wage claimant's entitlement to benefits (including, additional benefits, extended benefits, and dependents' allowances when applicable) under the provisions of its law based on employment and wages in the paying state, if any, and all such employment and wages transferred to it thereunder. The paying state shall apply all the provisions of its law to each determination made thereunder, even if the combined-wage claimant has no earnings in covered employment in that state, except that the paying state may not determine an issue which has previously been adjudicated by a transferring state. If the paying state fails to establish a benefit year for the combined-wage claimant, or if the claimant withdraws such claim as provided herein, the paying state shall return to each transferring state all employment and wages.

(b) The paying state shall give to the claimant a notice of each of its determinations on the claimant's combined-wage claim that the claimant is required to receive under the Secretary's claim determinations standard, and the contents of each such notice shall meet such standard. When the claimant has filed a combined-wage claim in a state other than the paying state, the paying state shall send a copy of each such notice to the local office in which the claimant filed such claims.

(c) Redeterminations may be made by the paying state in accordance with its law based on additional or corrected information received from any source, including a transferring state, except that such information shall not be used as a basis for changing the paying state if benefits have been paid under the combined-wage claim.

- (d) Appeals shall be filed as follows:
- (1) Except as provided in paragraph (3), where the claimant files a combined-wage claim in the paying state, any protest, request for redetermination, or appeal shall be in accordance with the law of such state.
 - (2) Where the claimant files a combined-wage claim in a state other than the paying state, or under the circumstances described in paragraph (3), any protest, request for redetermination, or appeal shall be in accordance with the interstate benefit payment plan.
 - (3) To the extent that any protest, request for redetermination, or appeal involves a dispute as to the coverage of the employing unit or services in a transferring state, or otherwise involves the amount of employment and wages subject to transfer, the protest, request for redetermination, or appeal shall be decided by the transferring state in accordance with its law.

(e) If there is an overpayment outstanding in a transferring state and such transferring state so requests, the overpayment shall be deducted from any benefits the paying state would otherwise pay to the claimant on the claimant's combined-wage claim except to the extent prohibited by the law of the paying state. The paying state shall transmit the amount deducted to the transferring state or credit the deduction against the transferring state's required reimbursement under this arrangement. This subsection shall apply to overpayments only if the transferring state certifies to the paying state that the determination of overpayment was made within three years before the combined-wage claim was filed and that repayment by the claimant is legally required and enforceable against the claimant under the law of the transferring state.

(f) At the close of each calendar quarter, the paying state shall send each transferring state a statement of benefits charged during such quarter to such state for each combined-wage claimant. Each such charge shall bear the same ratio to the total benefits paid to the combined-wage claimant by the paying state as such claimant's wages transferred by the transferring state bear to the total wages used in such determination. The computation of such ratio shall be to three or more decimal places. [Eff. 6/26/81] (Auth: HRS ' 383-92) (Imp: HRS ' ' 383-92, 383-106)

' ' 12-5-108 to 12-5-110 (Reserved)

' 12-5-111 Responsibilities of transferring states. (a) Each transferring state shall promptly transfer to the paying state the employment and wages the combined-wage claimant had in covered employment during the base period of the paying state. Any employment and wages so transferred shall be transferred without restriction as to their use for determination and benefit payments under the provisions of the paying state's law.

(b) Employment and wages transferred to the paying state by a transferring state shall not include:

- (1) Any employment and wages which have been transferred to any other paying state and not returned unused, or which have been used in the transferring state as the basis of a monetary determination which established a benefit year; or
- (2) Any employment and wages which have been cancelled or are otherwise unavailable to the claimant as a result of a determination by the transferring state made prior to its receipt of the request for transfer, if such determination has become final or is in the process of appeal but is still pending. If the appeal is

finally decided in favor of the combined-wage claimant, any employment and wages involved in the appeal shall forthwith be transferred to the paying state and any necessary redetermination shall be made by such paying state.

(c) Each transferring state shall, as soon as practicable after receipt of a quarterly statement of charges described herein, reimburse the paying state accordingly. [Eff. 6/26/81] (Auth: HRS ' 383-92) (Imp: HRS ' ' 383-92, 383-106)

' ' **12-5-112 to 12-5-114 (Reserved)**

' **12-5-115 Reuse of employment and wages.** Employment and wages which have been used under this arrangement for a determination of benefits which establishes a benefit year shall not thereafter be used by any state as the basis for another monetary determination of benefits. [Eff. 6/26/81] (Auth: HRS ' 383-92) (Imp: HRS ' ' 383-92, 383-106)

' ' **12-5-116 to 12-5-118 (Reserved)**

' **12-5-119 Non-charge on benefits paid on combined-wage claims.** Benefits paid to a claimant who is eligible for benefits only by combining the claimant's employment and wages in two or more states shall not be charged to the reserve account of any base period employer on a contributory plan. [Eff. 6/26/81] (Auth: HRS ' 383-92) (Imp: HRS ' ' 383-65, 383-92, 383-106)

' ' **12-5-120 to 12-5-122 (Reserved)**

' **12-5-123 Amendment of interstate arrangement.** Periodically the secretary shall review the operation of this arrangement and shall propose such amendments to the arrangement as the secretary believes are necessary or appropriate. Any state unemployment compensation agency or the interstate conference of employment security agencies may propose amendments to the arrangement. Any proposal shall constitute an amendment to the arrangement upon approval by the Secretary in consultation with the states unemployment agencies. Any such amendment shall specify when the change shall take effect, and to which claims it shall apply. [Eff. 6/26/81] (Auth: HRS ' 383-92) (Imp: HRS ' 383-106)

' ' **12-5-124 to 12-5-128 (Reserved)**

SUBCHAPTER 5

BENEFITS TO INTERSTATE CLAIMANTS

Historical Note: Subchapter 5 is based substantially upon Regulation V of the Rules and Regulations of the Department of Labor and Industrial Relations relating to Payment of Benefits to Interstate Claimants. [Eff. 3/1/39; am 9/13/39; am 6/23/41; am 4/1/51; am 7/15/51; am 6/18/53; am 7/5/53; am 5/1/61; am 12/16/76; R 6/26/81]

' **12-5-129 Application.** Sections 12-5-133 to 12-5-157 shall govern the department in its administrative cooperation with other states adopting similar rules for the payment of benefits to interstate claimants and the recovery of overpayments. [Eff. 6/26/81] (Auth: HRS ' 383-92) (Imp: HRS ' 383-108)

' ' **12-5-130 to 12-5-132 (Reserved)**

' **12-5-133 Definitions.** As used in Sections 12-5-129 to 12-5-157, unless the context clearly requires otherwise:

"Agent state" means any state from or through which an individual files an interstate claim for benefits against another state;

"Benefits" means the compensation payable to an individual, with respect to that individual's unemployment, under the unemployment insurance law of any state;

"Interstate benefit payment plan" means the plan approved by the interstate conference of employment security agencies under which benefits shall be payable to unemployed individuals absent from the state in which benefit credits have been accumulated;

"Interstate claimant" means an individual who files an interstate claim for benefits from another state under the unemployment insurance law of a liable state, through the facilities of an agent state, or directly with the liable state. The term Ainterstate claimant@ shall not include any individual who customarily commutes across state lines from a residence in one state to work in a liable state unless the department finds that this exclusion would create undue hardship on such claimants in specific areas;

"Liable state" means any state against which an individual files, from or through another state, an interstate claim for benefits;

"Offset" means the withholding of the overpaid amount against benefits which would otherwise be payable for a compensable week of unemployment;

"Overpayment" means an improper payment of benefits, from a state or federal unemployment compensation fund, that has been determined recoverable under the requesting state's law;

"Participating state" means a state which has subscribed to the Interstate Reciprocal Overpayment Recovery Arrangement;

"Paying state" means the state under whose law a claim for unemployment benefits has been established on the basis of combining wages and employment covered in more than one state;

"Recovering state" means the state that has received a request for assistance from a requesting state;

"Requesting state" means the state that has issued a final determination of overpayment

and is requesting another state to assist it in recovering the outstanding balance from the overpaid individual;

"State" includes the states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands;

"Transferring state" means a state in which a combined wage claimant had covered employment and wages in the base period of a paying state, and which transfers such employment and wages to the paying state for its use in determining the benefit rights of such claimant under its law.

"Week of unemployment" includes any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed. [Eff. 6/26/81; am 10/12/00; am 11/6/06] (Auth: HRS ' 383-92) (Imp: HRS ' ' 383-92, 383-108)

' ' 12-5-134 to 12-5-135 (Reserved)

' 12-5-136 Notification of interstate claim. The liable state will notify the agent state of each initial claim, reopened claim, claim transferred to interstate status, and each week claim filed from the agent state using uniform procedures and record format pursuant to the Interstate Benefit Payment Plan. [Eff. 10/12/00] (Auth: HRS ' 383-92) (Imp: HRS ' ' 383-92, 383-108)

' 12-5-137 Registration for work. (a) The agent state shall register for work each interstate claimant who files through the agent state, or upon notification of a claim filed directly with the liable state, as required by the law, regulations and procedures of the agent state. Such registration shall be accepted as meeting the registration requirements of the liable state.

(b) Each agent state shall duly report to the liable state in question, each interstate claimant who fails to meet registration/reemployment assistance reporting requirements of the agent state. [Eff. 6/26/81; am 10/12/00] (Auth: HRS ' 383-92) (Imp: HRS ' ' 383-92, 383-108)

' ' 12-5-138 to 12-5-140 (Reserved)

' 12-5-141 Benefit rights of interstate claimants. (a) If a claimant files a claim against any state, and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits.

(b) For the purposes of this section, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction.

(c) The benefit rights of interstate claimants established by this section shall apply only with respect to new claims (notices of unemployment) filed on or after July 5, 1953. [Eff. 6/26/81] (Auth: HRS ' 383-92) (Imp: HRS ' ' 383-92, 383-108)

' ' 12-5-142 to 12-5-144 (Reserved)

' 12-5-145 Claims for benefits. (a) Claims for benefits or waiting period filed by an interstate claimant directly with the liable state shall be filed in accordance with the liable

state=s procedures.

(b) With respect to weeks of unemployment during which an individual is attached to a regular employer, the liable state shall accept as timely any claim which is filed through the agent state within the time limit applicable to such claims under the law of the agent state.

(c) Individuals who temporarily leave the area in which they are currently filing for benefits and registered for work may file for not more than two consecutive weeks of benefits by reporting to an unemployment insurance claims office serving the new area. Such continued claims for benefits shall comply with the filing requirements of subsection (a). If the individual remains in the new area for a longer period of time, an initial interstate claim should be filed. However, the requirements of this subsection may not apply if the individual is instructed or authorized to do otherwise by the department or the unemployment insurance claims office in the new area. [Eff. 6/26/81; am 3/10/86; am 10/12/00] (Auth: HRS ' 383-92) (Imp: HRS ' ' 383-92, 383-108)

' 12-5-146 to 12-5-148 (Reserved)

' 12-5-149 Determination of claims. (a) The agent state shall, in connection with each claim filed by an interstate claimant, identify to the liable state in question, any potential issue relating to the claimant's availability for work and eligibility for benefits detected by the agent state.

(b) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to the identification of potential issues identified in connection with initial or weeks claimed filed through the agent state and the reporting of relevant facts pertaining to each claimant's failure to register for work or report for reemployment assistance as required by the agent state. [Eff. 6/26/81; am 10/12/00] (Auth: HRS ' 383-92) (Imp: HRS ' ' 383-92, 383-108)

' 12-5-150 (Reserved)

§12-5-151 Recovery of overpayment under the Interstate Reciprocal Overpayment Recovery Arrangement; responsibilities of participating states. (a) If an individual has a state or federal overpayment outstanding in a participating state and recovery is requested from another participating state, the requesting state shall perform the following duties:

- (1) Send the recovering state a written request for overpayment recovery assistance which includes:
 - (A) Certification that the overpayment is legally collectable under the requesting state's law;
 - (B) Certification that the determination is final and that any rights to postponement of recoupment have been exhausted or have expired;
 - (C) A statement as to whether the state is participating in cross-program offset by agreement with the Secretary of Labor; and
 - (D) A copy of the initial overpayment determination and a statement of the outstanding balance.
- (2) Send notice of the request for overpayment recovery assistance to the individual.
- (3) Send to the recovering state a new outstanding overpayment balance whenever the requesting state receives any amount of repayment from a source other than the recovering state.

(b) Upon receipt of the request for recovery of the individual's outstanding state or federal overpayment, the recovering state shall perform the following duties:

- (1) Offset benefits payable for each week claimed by the individual in the amount determined under state law.
- (2) Provide the individual with a notice of the offset amount.
- (3) Prepare and forward, no less than once a month, a check representing the amount recovered made payable to the requesting state, excepted as provided in section (c) below.
- (4) Retain a record of the overpayment balance in its files no later than the exhaustion of benefits, end of the benefit year, exhaustion or end of an additional or extended benefits period, or other extensions of benefits; whichever is later.
- (5) The recovering state shall not redetermine the original overpayment determination.

(c) If the individual elects to file a combined-wage claim and the individual has a state or federal overpayment outstanding in a transferring state, the paying state shall:

- (1) Offset any outstanding overpayment in the transferring state(s) prior to honoring a request from any other participating state under the Interstate Reciprocal Overpayment Recovery Arrangement.
- (2) Credit the deductions against the statement of benefits paid to combined-wage claimants, or forward a check to the transferring state as described in subsection (b)(3).

(d) If the individual withdraws the combined-wage claim after benefits have been paid, the withdrawal shall be honored only if the combined-wage claimant has repaid any benefits paid or authorizes the new liable state to offset the overpayment.

- (1) The paying state shall issue an overpayment determination and forward a copy, together with an overpayment recovery request and an authorization to offset, with the initial claim to the new liable state.
- (2) The recovering state shall:
 - (A) Offset the total amount of any overpayment resulting from the withdrawal of a combined-wage claim, prior to the release of any payments to the claimant;
 - (B) Offset the total amount of any overpayment resulting from the withdrawal of a combined-wage claim prior to honoring a request from any other participating state under this arrangement;
 - (C) Provide the individual with a notice of the amount offset; and
 - (D) Prepare and forward a check representing the amount recovered to the requesting state as described in subsection (b)(3).

(e) The recovering state shall offset benefits payable under a state unemployment compensation program to recover any benefits overpaid under a federal unemployment compensation program (as described in the recovering state's agreement with the Secretary of Labor) and vice versa, in the same manner as required under this section, as appropriate, when both the recovering state and requesting state have entered into an agreement with the Secretary of Labor to implement section 303(a) of the Social Security Act. [Eff. 11/6/06] (Auth: HRS §§383-92) (Imp: HRS §§383-92, 383-108)

' **12-5-152 (Reserved)**

' **12-5-153 Appellate procedure.** (a) The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims when so requested by a liable state.

(b) With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified officer of the agent state.

(c) The liable state shall conduct hearings in connection with appealed interstate benefit claims. The liable state may contact the agent state for assistance in special circumstances.

(d) The interstate claimant whose liable state is Hawaii shall file an appeal of a determination or redetermination issued pursuant to section 383-36, Hawaii Revised Statutes, in accordance with section 383-38, Hawaii Revised Statutes. The appeal hearing shall be conducted by appeals officers in Hawaii by telephone. [Eff. 6/26/81; am 10/12/00] (Auth: HRS ' 383-92) (Imp: HRS ' ' 383-92, 383-108)

' ' **12-5-154 to 12-5-156 (Reserved)**

' **12-5-157 Extension of interstate benefits to include claims taken in and for Canada.** Sections 12-5-133 to 12-5-153 shall apply in all provisions to claims taken in and for Canada. [Eff. 6/26/81] (Auth: HRS ' 383-92) (Imp: HRS ' ' 383-108, 383-109)

' ' **12-5-158 to 12-5-162 (Reserved)**

SUBCHAPTER 6

INTERSTATE RECIPROCAL COVERAGE ARRANGEMENT

Historical Note: Subchapter 6 is based substantially upon Regulation VI of the Rules and Regulations of the Department of Labor and Industrial Relations relating to Interstate Reciprocal Coverage Arrangement. [Eff. 12/1/55; am 12/16/76; R 6/26/81]

' **12-5-163 Application.** Sections 12-5-167 to 12-5-183 shall govern the department in its administrative cooperation with other states subscribing to the interstate reciprocal coverage arrangement hereinafter referred to as "the arrangement". [Eff. 6/26/81] (Auth: HRS ' 383-92) (Imp: HRS ' ' 383-92, 383-106, 383-108)

' ' **12-5-164 to 12-5-166 (Reserved)**

' **12-5-167 Definitions.** As used in Sections 12-5-171 to 12-5-183, unless the context clearly indicates otherwise:

"Agency" means any officer, board, commission, or other authority charged with the administration of the unemployment insurance law of a participating jurisdiction;

"Interested agency" means the agency of an interested jurisdiction;

"Interested jurisdiction" means any participating jurisdiction to which an election submitted under Section 12-5-171 is sent for its approval;

"Jurisdiction" means any state of the United States, the District of Columbia, or, with respect to the federal government, the coverage of any federal unemployment insurance law;

"Participating jurisdiction" means a jurisdiction whose administrative agency has subscribed to the arrangement and whose adherence thereto has not terminated;

"Services 'customarily performed' by an individual in more than one jurisdiction" means services performed in more than one jurisdiction during a reasonable period, if the nature of the services gives reasonable assurance that such services will continue to be performed in more than one jurisdiction or if such services are required or are expected to be performed in more than one jurisdiction under the election. [Eff. 6/26/81] (Auth: HRS ' 383-92) (Imp: HRS ' ' 383-92, 383-106, 383-108)

' ' **12-5-168 to 12-5-170 (Reserved)**

' **12-5-171 Submittal and approval of coverage election under the arrangement.**

(a) Any employing unit may file an election, on a form provided or approved by the elected jurisdiction, to cover under the law of a single participating jurisdiction all of the services performed for such employing unit by any individual who customarily works for such employing unit in more than one participating jurisdiction.

Such an election may be filed, with respect to an individual, with any participating jurisdiction in which:

- (1) Any part of the individual's services are performed; or
- (2) The individual has residence; or
- (3) The employing unit maintains a place of business to which the individual's services bear a reasonable relation.

(b) The agency of the elected jurisdiction (thus selected and determined) shall initially approve or disapprove the election.

If such agency approves the election, it shall forward a copy thereof to the agency of each other participating jurisdiction specified thereon, under whose unemployment compensation law the individual or individuals in question might, in the absence of such election, be covered. Each such interested agency shall approve or disapprove the election, as promptly as practicable; and shall notify the agency of the elected jurisdiction accordingly.

In case its law so requires, any such interested agency may, before taking such action, require from the electing employing unit satisfactory evidence that the affected employees have been notified of, and have acquiesced in, the election.

(c) If the agency of the elected jurisdiction, or the agency of any interested jurisdiction, disapproves the election, the disapproving agency shall notify the elected jurisdiction and the electing employing unit of its action and of its reasons thereof.

(d) Such an election shall take effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies.

(e) An election thus approved shall take effect, as to any interested agency, only if it is approved by such agency.

(f) In case any such election is approved only in part, or is disapproved by some of such agencies, the electing employing unit may withdraw its election within ten days after being notified of such action. [Eff. 6/26/81] (Auth: HRS ' 383-92) (Imp: HRS ' ' 383-92, 383-106, 383-108)

' ' 12-5-172 to 12-5-174 (Reserved)

' 12-5-175 Effective period of elections. (a) An election duly approved under section 12-5-171 shall become effective at the beginning of the calendar quarter in which the election was submitted unless the election, as approved, specified the beginning of a different calendar quarter.

If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, such earlier date may be approved solely as to those interested jurisdictions in which the employer had no liability to pay contributions for the earlier period in question.

(b) The application of an election to any individual under section 12-5-171 shall terminate if the agency of the elected jurisdiction finds that the nature of the services customarily performed by the individual for the electing unit has changed, so that they are no longer customarily performed in more than one participating jurisdiction. Such termination shall be effective as of the close of the calendar quarter in which notice of such findings is mailed to all parties affected.

(c) Except as provided in subsection (b), each election approved hereunder shall remain in effect through the close of the calendar year in which it is submitted, and thereafter until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

(d) Whenever an election under Section 12-5-171 ceases to apply to any individual under subsections (b) and (c), the electing unit shall notify the affected individual accordingly. [Eff. 6/26/81] (Auth: HRS, ' 383-92) (Imp: HRS ' ' 383-92, 383-106, 383-108)

' ' 12-5-176 to 12-5-178 (Reserved)

' 12-5-179 Reports and notices by the electing unit. (a) The electing unit shall promptly notify each individual affected by its approved election, on a form supplied by the elected jurisdiction, and shall furnish the elected agency a copy of such notice.

(b) Whenever an individual covered by an election under Section 12-5-171 is separated from employment, the electing unit shall again notify the individual forthwith as to the jurisdiction under whose unemployment insurance law such individual's services have been covered. If at the time of termination the individual is not located in the elected jurisdiction, the electing unit shall notify the individual as to the procedure for filing interstate benefit claims.

(c) The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, such as cases where an individual's services for the employer cease to be customarily performed in more than one participating jurisdiction or where a change in the work assigned to an individual requires the individual to perform services in a new participating jurisdiction. [Eff. 6/26/81] (Auth: HRS ' 383-92) (Imp: HRS ' ' 383-92, 383-106, 383-108)

' ' 12-5-180 to 12-5-182 (Reserved)

' 12-5-183 Approval of reciprocal coverage election. The director hereby delegates to the administrator of the unemployment insurance division authority to approve or disapprove reciprocal coverage election in accordance with Section 12-5-171. [Eff. 6/26/81] (Auth: HRS ' 383-92) (Imp: HRS ' ' 383-92, 383-106, 383-108)

' ' 12-5-184 to 12-5-188 (Reserved)

SUBCHAPTER 7

JOINT EXPERIENCE RATING ACCOUNTS

Historical Note: Subchapter 7 is based substantially upon Regulation VII of the Rules and Regulations of the Department of Labor and Industrial Relations relating to the Establishment, Maintenance, and Dissolution of Joint Experience Rating Accounts. [Eff. 7/15/53; am 12/16/76; R 6/26/81]

' **12-5-189 Application for joint accounts.** Two or more employing units under substantially the same ownership or control shall be entitled to a joint experience rating account upon making written application therefor, provided all such employing units have been chargeable with benefits throughout the calendar year preceding the year in which the application is made and have filed all reports and paid all contributions required of them by chapter 383, Hawaii Revised Statutes. [Eff. 6/26/81] (Auth: HRS ' ' 383-66, 383-92) (Imp: HRS ' ' 383-66, 383-92)

' ' **12-5-190 to 12-5-192 (Reserved)**

' **12-5-193 Computation of combined rate.** The department shall establish a joint experience rating account for employing units which qualify for such account and shall compute a combined rate effective as of the beginning of the calendar year in which such employing units make application for a joint account. The department shall also maintain separate experience rating accounts for each such employing unit. [Eff. 6/26/81] (Auth: HRS ' ' 383-66, 383-92) (Imp: HRS ' ' 383-66, 383-92)

' ' **12-5-194 to 12-5-196 (Reserved)**

' **12-5-197 Withdrawal from joint account.** After a joint experience rating account has been established, one or more of the employing units upon written request may withdraw from such joint account and shall thereupon receive a contribution rate computed on its separate experience. There shall be transferred to any such employing unit's separate experience rating account its portion of the joint account. [Eff. 6/26/81] (Auth: HRS ' ' 383-66, 383-92) (Imp: HRS ' ' 383-66, 383-92)

' ' **12-5-198 to 12-5-200 (Reserved)**

' **12-5-201 Change of ownership.** When it is determined to the satisfaction of the department that there is a substantial change in ownership or control of any employing unit which is included in a joint experience rating account, such employing unit shall be given a separate account from the date of such change in control or ownership. A contribution rate shall be computed for such employing unit based on the predecessor's portion of the joint account. [Eff. 6/26/81] (Auth: HRS ' ' 383-66, 383-92) (Imp: HRS ' ' 383-66, 383-92)

' ' **12-5-202 to 12-5-204 (Reserved)**

' **12-5-205 Dissolution of joint account.** A joint experience rating account shall be dissolved upon withdrawal or change in ownership or control of one or more of the component

employing units. The remaining employing units may make written application for a new joint account, for which the rate shall be computed on the basis of their portion of the dissolved joint account. [Eff. 6/26/81] (Auth: HRS ' ' 383-66, 383-92) (Imp: HRS ' ' 383-66, 383-92)

' ' 12-5-206 to 12-5-210 (Reserved)

SUBCHAPTER 8

DISCLOSURE OF INFORMATION

Historical Note: Subchapter 8 is based substantially upon Regulation VIII of the Rules and Regulations of the Department of Labor and Industrial Relations relating to Disclosure of Information. [Eff. 10/1/47; am 12/16/76; R 6/26/81]

' **12-5-211 Disclosure of information.** No disclosure of information obtained at any time from workers, employers, or other persons or groups in the course of administering the state employment security program under chapter 383, Hawaii Revised Statutes, shall be made directly or indirectly, except as authorized by sections 12-5-215 to 12-5-220. [Eff. 6/26/81; am 8/5/88] (Auth: HRS ' ' 383-92, 383-95) (Imp: HRS ' 383-95)

' ' **12-5-212 to 12-5-214 (Reserved)**

' **12-5-215 Authorized disclosures.** Disclosure of any information obtained at any time from workers, employers, or other persons or groups in the course of administering the state employment security program under chapter 383, Hawaii Revised Statutes, is authorized in the following cases for the following purposes:

- (1) To individual applicants and employers to the extent necessary for the efficient performance of recruitment, placement, employment counseling, and other employment service functions;
- (2) To any properly identified claimant for benefits or payments under a state, territorial, or federal unemployment compensation or readjustment allowance law, or to such claimant's duly authorized representative, information which directly concerns the claimant and is reasonably necessary for the proper presentation of such claimant's claim;
- (3) To any officer or employee of any agency of the federal government or of a state or territorial government lawfully charged with the administration of a federal, state, or territorial unemployment insurance or readjustment allowance law, but only for purposes reasonably necessary for the proper administration of such law;
- (4) To any officer or employee of any agency of the federal government or a state or territorial government lawfully charged with the administration of a law providing for old-age assistance, or other public assistance, work relief, pension, retirement, or other benefit payments, but only for purposes reasonably necessary for the proper administration of such law; and
- (5) To applicants, employers, and the public, general information concerning employment opportunities, employment levels and trends, and labor supply and demand, provided such release or publication does not include information identifiable to individual applicants, employers, or employing establishments. [Eff. 6/26/81] (Auth: HRS ' ' 383-92, 383-95) (Imp: HRS ' 383-95)

' ' **12-5-216 to 12-5-218 (Reserved)**

' **12-5-219 Disclosure to governmental agencies.** Disclosure of information pertaining to claimants and employers in connection with unemployment insurance to a federal, state,

territorial, or municipal agency shall be considered to be in the public interest only if such disclosure is in connection with its public duties, and the information so disclosed will be used for the performance of such public duties, and only if that agency agrees not to release or publish in any manner information identifiable to individual applicants, employees, or employing establishments, provided that the agency shall not be bound by this restriction if it is necessary for the disclosed information to be used in any criminal proceeding. [Eff. 6/26/81; am 8/5/88] (Auth: HRS ' ' 383-92, 383-95) (Imp: HRS ' 383-95)

' 12-5-220 Disclosure of quarterly wage detail information. (a) The department shall disclose quarterly wage detail information to authorized requesting agencies which have entered into an agreement in accordance with subsection (b) for purposes deemed by the department to be useful in verifying eligibility for and the amount of benefits or to be reasonably necessary for the proper administration of the requesting agency's program.

(b) The agreement between the department and the requesting agency shall include, but not be limited to:

- (1) The purposes for which requests will be made and the specific information needed;
- (2) Identification of all agency officials, by position, with authority to request information;
- (3) Methods and timing of the requests for information, including the format to be used, and the period of time needed to furnish the requested information;
- (4) Basis for establishing the reporting periods for which information will be provided;
- (5) Provisions for determining appropriate reimbursement from the requesting agency for the costs incurred in providing data;
- (6) Safeguards to ensure that information obtained from the department will be protected against unauthorized access or disclosure. At a minimum, such procedures will comply with the requirements of subsection (c).

(c) Requesting agencies shall comply with the following measures to protect confidentiality of the information against unauthorized access or disclosure:

- (1) The information shall be used only to the extent necessary to assist in the valid administrative needs of the program receiving such information;
- (2) The requesting agency shall not use the information for any purposes not specifically authorized under an agreement that meets the requirements of subsection (b);
- (3) The information shall be stored in a place physically secure from access by unauthorized persons;
- (4) Precautions shall be taken to ensure that only authorized persons are given access to computer data files;
- (5) Information in electronic format, such as magnetic tapes or discs, shall be stored and processed in such a way that unauthorized persons cannot retrieve the information by means of a computer, remote terminal, or other means;
- (6) The requesting agency shall:
 - (A) instruct all personnel with access to the information regarding the confidential nature of the information, the requirements of the agreement, the sanctions specified in section 383-143, Hawaii Revised Statutes, and other relevant state statutes; and
 - (B) attest to the agency's policies and procedures regarding confidentiality in the

agreement as provided for in subsection (b).

(d) The requesting agency shall permit the department and the U.S. Department of Labor (and other authorized federal officials) to make onsite inspections to ensure that the requirements of this section are being met. [Eff 8/5/88] (Auth: HRS ' ' 383-92, 383-95) (Imp: HRS ' 383-95)

' ' 12-5-221 to 12-5-224 (Reserved)

SUBCHAPTER 9

DESTRUCTION OF DEPARTMENTAL RECORDS

Historical Note: Subchapter 9 is based substantially upon Regulation IX of the Rules and Regulations of the Department of Labor and Industrial Relations relating to Destruction of Departmental Records [Eff. 7/15/51; am 12/16/76; R 6/26/81]

' **12-5-225 Claim records and related documents.** Claim records, including initial claims, initial determinations of benefits, low earnings reports, wage and separation reports, claims examiners' decisions, continued claims and pay orders, disallowed continued claims, correspondence, and other related documents may be destroyed at the expiration of three years after the benefit year ending date of each claim. [Eff. 6/26/81] (Auth: HRS ' ' 383-92, 383-102) (Imp: HRS ' 383-102)

' ' **12-5-226 to 12-5-228 (Reserved)**

' **12-5-229 Wage and separation reports of employers.** Wage and separation reports of employers may be destroyed three years after the quarter to which they relate. [Eff 6/26/81] (Auth: HRS ' ' 383-92, 383-102) (Imp: HRS ' 383-102)

' **12-5-230 Quarterly wage detail reports.** Quarterly wage detail reports of employers filed with the department may be destroyed after five years have elapsed from the end of the calendar year to which they relate. [Eff 8/5/88] (Auth: HRS ' ' 383-92, 383-70) (Imp: HRS ' ' 383-70, 383-102)

' ' **12-5-231 to 12-5-232 (Reserved)**

' **12-5-233 Report of new hires.** Report of new hires may be destroyed after two years have elapsed from the date of hire. This section shall be applicable only for reports of new hires filed prior to October 1, 1998. [Eff. 6/26/81; am 10/12/00] (Auth: HRS ' ' 383-92, 383-102) (Imp: HRS ' 383-102)

' ' **12-5-234 to 12-5-236 (Reserved)**

' **12-5-237 Other employer records and correspondence.** All other employer records and correspondence may be destroyed after five years have elapsed from the end of the calendar year to which they relate. [Eff. 6/26/81] (Auth: HRS ' ' 383-92, 383-102) (Imp: HRS ' 383-102)

' ' **12-5-238 to 12-5-240 (Reserved)**

' **12-5-241 Benefit payment ledgers and employers' chargeback statements.** Benefit payment ledgers and employers' chargeback statements may be destroyed after five years have elapsed from the end of the calendar year to which they relate. [Eff. 6/26/81] (Auth: HRS ' ' 383-92, 383-102) (Imp: HRS ' 383-102)

'' **12-5-242 to 12-5-244 (Reserved)**

' **12-5-245 Inactive employer contribution ledgers.** Inactive employer contribution ledgers may be destroyed after five years have elapsed from the end of the calendar year to which they relate, provided that a summary of each account has been made showing:

- (1) Name, address, and account number; and
- (2) Commencement and termination dates; and
- (3) Balance of net reserve or, if the reserve has been transferred, the account number of the successor employer. [Eff. 6/26/81] (Auth: HRS ' ' 383-92, 383-102) (Imp: HRS ' 383-102)

'' **12-5-246 to 12-5-248 (Reserved)**

' **12-5-249 Duplicate copies and incidental reports.** Carbon copies and other forms of duplicate copies, incidental records, reports and correspondence, and other papers of minor or incidental importance may be destroyed upon approval of the department. [Eff. 6/26/81] (Auth: HRS ' ' 383-92, 383-102) (Imp: HRS ' 383-102)

'' **12-5-250 to 12-5-252 (Reserved)**

' **12-5-253 Destruction pending completion of matter.** No records mentioned in sections 12-5-225 to 12-5-249 shall be destroyed until all matters pertaining thereto have been fully and finally completed. [Eff. 6/26/81] (Auth: HRS ' ' 383-92, 383-102) (Imp: HRS ' 383-102)