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

Dear Ms. Atkinson:  

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

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

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

Also under Act 171 (2009), the new law also provides for no disqualification when an individual is separated due to compelling family reasons including domestic or sexual violence, illness or disability of the individual’s immediate family, and to accompany a spouse due to a change of the spouse’s employment. In a memorandum to our staff, the individual’s immediate family is clarified and interpreted to mean the individual’s spouse, parents, and minor children under the age of 18 under all circumstances cited in the law. Further interpretation in the memorandum also clarified that the individual need only demonstrate that the decision to separate from work was based on his/her belief that
continued employment would jeopardize the safety of the individual or a member of the
individual’s immediate family. By policy and rule, Hawaii already allowed benefits to
individuals who quit to relocate with a spouse affected by job transfers and those who quit
due to compelling personal reasons such as domestic violence, sexual harassment, or
illness/disability of a family member. Enclosed for your reference is a copy of the
memorandum provided to the Unemployment Insurance Division staff regarding the
interpretation of this new law.

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

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

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

Sincerely,

LINDA LINGLE

Enclosures (2)

c: Gerard Hildebrand, Division Chief, USDOL UC Legislation
   Jamie Bachinski, Division Chief, SFDOL Region 6
   Linda Uesato, Administrator, Unemployment Insurance Division
July 2, 2009

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

Dear Madam President and Members of the Senate:

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

SB1568 SD2 HD1
A BILL FOR AN ACT
RELATING TO UNEMPLOYMENT INSURANCE.
ACT 171 (09)

Sincerely,

LINDA LINGLE
GOVERNOR
A BILL FOR AN ACT

RELATING TO UNEMPLOYMENT INSURANCE.

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

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

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

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

For purposes of this section, the term "compelling family reason" means any of the following:
(1) Domestic or sexual violence that is verified by reasonable and confidential documentation that causes the individual to reasonably believe that the individual's continued employment may jeopardize the safety of the individual or any member of the individual's immediate family (as defined by the United States Secretary of Labor), including any of the following circumstances:

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

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

(C) The need of the individual or the individual's minor child to obtain treatment to recover from the physical or psychological effects of domestic or sexual violence prevents the individual from reporting to work;
(D) The employer's refusal to grant the individual's request for leave to address domestic or sexual violence and its effects on the individual or the individual's minor child, including leave authorized by Section 102 of the Federal Family and Medical Leave Act of 1993, Public Law 103-3, as amended, or other federal, state, or county law; or

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

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

(3) The need for the individual to accompany the individual's spouse, because of a change in the location of the spouse's employment, to a place from
which it is impractical for the individual to commute to work.

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

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

(2) A signed written statement from:

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

(B) The individual's attorney or advocate;

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

(D) A medical or other professional from whom the individual or the individual's minor child has sought assistance related to the domestic or sexual violence,
attesting to the domestic or sexual violence and
explaining how the continued employment creates an
unreasonable risk of further violence; or
(3) A police or court record suggesting or demonstrating
that the continued employment may cause an
unreasonable risk of further violence.
(c) All information provided to the department pursuant to
this section, including any statement of the individual or any
other documentation, record, or corroborating evidence
discussing or relating to domestic or sexual violence, and the
fact that the individual has applied for, inquired about, or
obtained unemployment compensation by reason of this section
shall be retained in the strictest confidence by the
individual's former or current employer, and shall not be
disclosed except to the extent that disclosure is requested or
consented to by the employee, ordered by a court or
administrative agency, or otherwise required by applicable
federal or state law.
(d) As used in this section, the terms "domestic or sexual
violence," "stalking," and "victim services organization" shall
have the same meaning as in section 378-71."
SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2009.
State of Hawaii
Department of Labor and Industrial Relations
UNEMPLOYMENT INSURANCE DIVISION

INTER-OFFICE COMMUNICATION

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

FROM  Linda Y. Uesato, Administrator, UI Division

DATE  July 9, 2009

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

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

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

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

A. PART-TIME WORKERS

1. The law provides that an individual shall not be denied unemployment benefits under any provision relating to availability for work, active search for work, or refusal to accept work solely because such an individual is seeking only part-time work. This provision recognizes that an individual is still considered eligible for benefits even if only available for a portion of the week claimed as long as the individual does not withdraw from the labor market.
2. Continue to apply existing policy and practice by allowing individuals who worked the majority of weeks of work in the base period in part-time employment and whose UI weekly benefit amount is based on part-time employment to be available for work under similar conditions, comparable to the individual’s part-time work experience in the base period. No AA issue should be created for such individuals who were previously employed on a part-time basis and are only available for and seeking part-time work to the same extent as in their base period.

- Example: If an individual has worked 40 weeks in the base period and 21 weeks are part-time, this individual may limit his/her availability to only part-time work as the majority of weeks of work in the base period included part-time work.

- Example: If an individual worked 16 hours per week in the base period, this individual is required to be available for and seek jobs with at least 16 hours of work per week.

3. If the majority of weeks of work in the base period employment do not include part-time work, the individual must seek full-time work. An AA issue should be created and benefits may be denied if such individual refuses to be available for and seek full-time work.

4. SW issues should be adjudicated in accordance with the above policy guidance.

B. SEPARATION FOR COMPELLING FAMILY REASONS

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

1. Domestic or sexual violence that is verified by reasonable and confidential documentation which causes the individual to reasonably believe that the individual’s continued employment may jeopardize the safety of the individual or any member of the individual’s immediate family.

   a. Under subsection (a), any references to the individual or the individual’s minor child in Act 171 shall be considered to be examples of situations addressing a family...
member that could similarly affect other immediate family members such as the individual’s spouse or parents.

b. Under subsection (b), Act 171 contains examples of documentation for purposes of verifying the individual’s belief that continued employment would jeopardize the safety of the individual or a member of the immediate family. Any other kind of evidence that reasonably proves domestic violence is also acceptable. The individual is not required to provide more than one type of evidence. The individual is also not required to produce evidence that he/she was advised to separate from work due to domestic violence. The individual need only demonstrate that the decision to separate from work was based on his/her belief that continued employment would jeopardize the safety of the individual or a member of the individual’s immediate family.

c. Act 171 expands upon Section 12-5-47(c)(7), Administrative Rules, which currently allows good cause to an individual who is a victim of domestic or sexual violence, to include all discharges as well.

d. In discharge situations, there must be a willful or wanton disregard of the employer’s interest to warrant misconduct. Separations for compelling family reasons do not generally meet the conditions of misconduct contained in Section 12-5-51(c) or 12-5-51(d), Administrative Rules.

- Where the individual fails to notify the employer of an absence(s), misconduct may exist despite the fact that there are circumstances of a compelling family reason. However, further investigation is necessary to determine the reason for the lack of notification to the employer.

- Example: If an individual was hospitalized due to domestic violence and was unable to contact the employer and was subsequently discharged by the employer, this individual is considered to be separated from work due to compelling family reasons.

- Example: If an individual made a sudden decision to go into hiding due to domestic violence and was afraid to contact the employer and was subsequently discharged by the employer, this individual is considered to be separated from work due to compelling family reasons.
2. Illness or disability of a member of the individual’s immediate family.
   a. “Illness” means a verified illness which necessitates the care of the ill person for a period of time longer than the employer is willing to grant leave (paid or otherwise). “Disability” means a verified disability which necessitates the care of the disabled person for a period of time longer than the employer is willing to grant leave (paid or otherwise) for. “Disability” encompasses all types of disability, including (1) mental and physical disability; (2) permanent and temporary disabilities; and (3) partial and total disabilities.
   b. Verification of the illness or disability by a medical doctor is not required if other sources of verification are available such as from a qualified professional such as a social worker.
   c. This paragraph expands our current policy of allowing personal good cause to individuals who leave employment to care for another family member to include discharges as well. Guidance on discharge situations can be found in B. 1. d. above.

3. The need for the individual to accompany the individual’s spouse because of a change in the location of the spouse’s employment to a place from which it is impractical for the individual to commute to work.
   a. “Impractical” is based on commuting patterns in the locality.
   b. This part of the bill continues our interpretation and policy of allowing personal good cause to individuals who must leave employment to relocate due to a change in their spouse’s employment similar to Section 12-5-47(c)(4), Administrative Rules, which currently allows good cause due to a change in the individual’s marital or domestic status. Discharges involving relocating with a spouse also fall under this provision.

C. AA RELATED ISSUES

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

1. Individuals must meet the able and available requirements by registering for work, making an active search for work, and being ready, willing, and able to accept work in order to be eligible for UI benefits. Any barriers to reemployment or withdrawal from the labor market should be adjudicated accordingly.
• Example: If an individual quits work for a compelling family reason and is not disqualified under VL but is now unavailable for work, the individual would be considered ineligible and denied benefits under AA.

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

Attachment