

## HAWAII EMPLOYERS COUNCIL

2682 Waiwai Loop, Honolulu, HI 96819 P.O. Box 29699, Honolulu, HI 96820-2099  
808-836-1511 Telephone 1-800-392-3589 Neighbor Islands 808-833-6731 Facsimile



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### 2008 – Employment Bills Introduced

#### Labor Relations/Employment Practices

- HB 2520, SB 2044 **Family Caregiving TDI/HFLL** – Permits employees to use up to 4 weeks of TDI benefits when taking leave to care for a family member with a “serious health condition” as defined by Hawaii Family Leave Law (“HFLL”). Eliminates current provision in TDI statute providing that if an employer has self-insured TDI plan, amounts of sick leave in excess of TDI minimum statutory equivalent can be used for HFLL purposes. Provides that if employer has a self-insured TDI plan that provides disability benefits through a sick leave plan, employees may use more than 10 days of paid sick leave for HFLL purposes. *Effective July 1, 2009.*
- HB 2930 **Minimum Wage** – Increases state minimum hourly wage to \$8.00 on July 1, 2008, \$8.50 on July 1, 2009, and \$9.00 on July 1, 2010. *Effective June 30, 2008.*
- SB 2257 **Tip Credit** – Provides that wage for tipped employees will satisfy minimum wage if wage is at least 75% of applicable minimum wage, and the combined amount of hourly wages and tips exceeds minimum wage by 50 cents or more. *Effective upon approval.*
- HB 3328 **Gender Identity** – Prohibits discrimination in employment on the basis of gender identity and expression of gender identity, regardless of whether an individual’s gender identity or expression is different from the individual’s birth gender. *Effective upon approval.*
- SB 2070 **DLIR Rulemaking Authority** – Provides that rules promulgated by DLIR shall no longer have the force and effect of law. Relegates DLIR rules to status of guidelines. *Effective upon approval.*
- HB 3271, SB 2238 **Telecommuting Credit for Employers** – Provides tax credits to employers for 2009 and 2010 for employer expenses attributable to telecommuting. Tax credit to be based on location of employer’s business, number of telecommuting employees, and number of telecommuting hours. *Effective upon approval for tax years after December 31, 2008.*
- HB 2910 **Employee Trade Secret Protection** – Provides that for trade secrets developed after January 1, 2009, employer trade secret protection in HRS Chapter 482B shall not apply to a trade secret developed by an employee in a collective bargaining unit unless fair compensation for the employee has been established through negotiation. *Effective upon approval.*
- HB 2911 **Employee Trade Secret Protection** – Invalidates any provision in an employment agreement requiring the employee to assign his/her invention rights to the employer, if the invention is developed on the employee’s own time and using the employee’s own materials. *Effective upon approval.*

- HB 2311 **Wrongful Discipline** – Prohibits an employer from taking adverse action against an employee who refrains from working in order to comply with a governmental quarantine order. *Effective upon approval.*
- SB 3245 **Employee Group Life Insurance** – Provides that premiums for employee group life insurance must be funded solely by employers. Eliminates current requirement that employee group life insurance policies must cover at least 10 employees. *Effective upon approval.*
- SB 2547 **Medical Marijuana Protection** – Prohibits employers from refusing to employ or penalizing an employee solely because of the individual’s status as a registered medical marijuana user or as a registered primary caregiver, unless failing to do so would place the employer in violation of federal law, or cause loss of a federal contract or federal funding. Prohibits medical marijuana use while “using stationary heavy equipment” and in the workplace, unless employee is self-employed. *Effective upon approval.*
- HB 3129, SB 3051 **Criminal Records Checks** – Authorizes the Department of Human Services or its designee to conduct criminal record checks for persons providing services to vulnerable adults and children. *Effective upon approval.*
- HB 3158, SB 3080 **Criminal Records Checks** – Authorizes the Hawaii Health Systems Corp. to conduct FBI nationwide criminal records checks on employees, applicants, current or prospective contractors, providers, or volunteers. *Effective upon approval.*
- SB 3247 **Union Defense of Member** – Provides that a union is not required to provide legal representation to a member accused of a crime under circumstances in which there is reasonable cause to believe that the member is guilty. *Effective upon approval.*
- HB 3437 **Attendant Care Providers** – Provides retroactive exclusion from the operation of workers compensation, TDI, unemployment insurance, and prepaid health laws for attendant care providers who provide Medicaid services for persons with developmental disabilities and mental retardation and who fall within Act 259 of 2007 Session Laws of Hawaii. *Effective upon approval.*

**Workers Compensation**

- HB 1969 **Owner exclusion** – Excludes from workers compensation coverage sole proprietors, partners of partnerships, and partners in LLPs or members of LLC having at least a 50% ownership interest. *Effective upon approval.*
- HB 2386 **TTD Benefits** – Requires employer to pay temporary total disability (“TTD”) benefits regardless of any controversy over compensability, and prevents termination of TTD benefits without an order of the Director of DLIR except under certain circumstances. *Effective July 1, 2008.*
- HB 2388 **Medical Benefits** – Requires employer to continue to pay for medical services despite a dispute over continued treatment, and prevents termination of medical benefits without an order of the Director of DLIR. *Effective July 1, 2008.*

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- HB 2573 HD 1, SB 2538 **Medical Fee Schedule** – Increases allowable charges under medical fee schedule from 110% to 120 % of the Medicare relative value scale. *Effective July 1, 2009 (HB 2573 HD1).*<sup>1</sup>
- HB 2387 **IME Examinations** – Requires Director of DLIR to appoint an impartial physician to conduct an independent medical examination (“IME”) of each claimant, with the cost of the examination to be funded by the special compensation fund. *Effective July 1, 2008.*
- HB 2545, SB 2591 **IME Examinations** – Provides that an IME physician be selected by mutual agreement of the parties, and if the parties cannot agree, the physician shall be selected by the Director. *Effective upon approval.*
- HB 2929 **IME Examinations** – Provides that IME physicians be selected by mutual agreement of the parties, and if the parties cannot agree, the Director shall provide a list of 3 IME physicians, with the selection procedure to be dependent upon whether an exam can be accomplished by one of the physicians in a timely manner. Provides for suspension of TTD benefits if an employee unreasonably refuses to submit to or unreasonably obstructs IME. *Effective upon approval.*
- HB 2752 **IME Examinations** – Requires that IME physicians be licensed, have held an active professional license for at least 5 years, be subject to peer review, and be known in the medical community to have conducted IMEs for employers. Provides that IME physicians are to be selected by mutual agreement of the parties, and if the parties are unable to agree, the IME physician is to be appointed by the Director. Prohibits DLIR or court from ordering more than one IME per case unless good reasons exist. *Effective July 1, 2008.*
- HB 2544, SB 2592 **PPD Examinations** – Provides that permanent impairment rating examinations be conducted by a physician selected by agreement between the parties, with the Director to appoint a physician if the parties cannot agree. Requires prior employee consent if an examination by an employer’s physician will include a permanent impairment rating. *Effective upon approval.*
- HB 2479 **Vocational Rehabilitation** – Expands eligibility for vocational rehabilitation to employees who are unable to return to their regular jobs after achieving maximum medical improvement, and are not offered work by their employer at their pre-injury earnings level. *Effective July 1, 2008.*
- HB 2017, SB 2066 **Vocational Rehabilitation** – Fixes drafting error. Provides that in returning an injured employee to suitable work, a VR provider must examine the feasibility of modified or other work with the employee’s “same” (rather than “different”) employer. *Effective July 1, 2008.*
- HB 2478 **Alternative Dispute Resolution** – Allows either a claimant or employer to opt for resolution of workers compensation disputes through an alternative dispute resolution (“ADR”) procedure, with costs to be split between the parties. *Effective July 1, 2008.*
- HB 2018, SB 2074 **Workers Compensation Advisory Council** – Establishes a workers compensation advisory council within the DLIR, to include the Director, five employer representatives, five employee representatives, and three non-voting insurer representatives. *Effective upon approval.*

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<sup>1</sup> Bills may be given a “defective” effective date by a committee, to ensure that the bill is not passed into law without further amendment.

- HB 3166, SB 3088 **Labor And Industrial Relations Appeals Board** – Authorizes the Labor and Industrial Relations Appeals Board to employ a hearings officer to expedite hearings on workers compensation treatment plan, vocational rehabilitation, and TTD issues. *Effective upon approval.*
- HB 2389 **Attorneys Fees** – Prohibits workers compensation claimants’ attorneys from entering into fee agreements involving attorneys’ fees higher than those approved by Director of DLIR. *Effective July 1, 2008.*
- HB 2407 **Professional Employee Organizations** – Requires PEOs which provide workers compensation insurance to clients to register with the Insurance Commissioner, and requires that workers compensation premiums for clients of PEOs be based on the actual claims experience of the client company. Requires PEOs to maintain separate records of work-related injuries and illnesses for each client company. *Effective January 1, 2009.*
- HB 2441 **Student Interns** – Provides that the state shall assume workers compensation liability for students participating in workplace learning programs approved by DOE or UH. *Effective upon approval.*

#### **Unemployment Insurance**

- HB 3168 **Experience Rating Transfers** – Conforms state unemployment insurance law to federal law by insuring uniform treatment of experience rating transfers. Clarifies that experience rating transfers for employers are effective beginning on the calendar year following the transfer. *Effective upon approval.*
- HB 2964, SB 2182, HB 2206, SB 2876 **Reed Act Funds** – HB 2964 and SB 2876 appropriate Reed Act funds for fiscal year 2008-2009 to the county workforce investment boards and DLIR. HB 2206 and SB 2182 appropriate Reed Act funds only to county workforce investment boards, and not to DLIR. *Effective July 1, 2008.*

#### **Temporary Disability Insurance**

- HB 2520, SB 2044 **Family Caregiving, TDI/HFLA** – See discussion above under Labor Relations/Employment Practices. Provides that employees may draw up to 4 weeks of TDI benefits per year when taking family leave under HFLA. *Effective July 1, 2009.*
- HB 3163, SB 3085 **TDI Special Fund** – Provides that TDI special fund may be used by DLIR for automation purposes, and appropriates \$5 million from TDI special fund to be used by DLIR to automate document filing and archives, and to provide for electronic filing of documents. *Effective upon approval.*

#### **Public Contracts/Prevailing Wages**

- HB 2442, SB 2409 **Public Procurement** – Prohibits state and counties from contracting for the procurement of apparel, as well as any equipment, materials, and supplies, which are provided by contractors and subcontractors, both inside and outside the U.S., who maintain “sweatshop” practices. Contractors and subcontractors contracting for the provision of goods to state and counties must provide “nonpoverty” wages to employees, cannot

mandate workweeks in excess of 48 hours, and cannot terminate employees unless “just cause” exists. Contractors and subcontractors must provide for mediation or grievance processes to resolve workplace disputes. Contractors and subcontractors cannot discriminate in employment with regard to gender, race, religion, age, disability, sexual orientation, nationality, political opinion, or social or ethnic origin. Prohibits contractors from campaigning against unionization attempts, and from taking adverse action against workers engaged in strikes. Provides for establishment of independent monitoring organization and verification of compliance by contractors. *Effective January 1, 2009.*

HB 3368 HD 1 **Union Organizing** – Provides that any private party to a governmental service contract over \$25,000 must give union organizers access to its premises, must agree to remain neutral in the face of a union organizing campaign, and must agree to a card-check procedure for union recognition. *Effective July 2009.*

HB 3029 **Commercial Projects on State Land** – Provides that construction projects of private entities on state or county land must be subject to Little Davis Bacon prevailing wage requirements, if the project is to be used for commercial, profit-making activities. *Effective July 1, 2008.*

SB 2108 **Contractor Preference** – With regard to contracts for goods, services, or construction, establishes a procurement preference for contractors who hire individuals with disabilities and persons receiving public assistance. *Effective July 1, 2008.*

HB 3145, SB 3067 **Service Contracts** – Authorizes state and counties to contract with private parties for services under specific circumstances, and exempts such contracts from operation of the civil service requirements in HRS Chapter 76. *Effective upon approval.*

HB 2927, HB 3165  
SB 3087 **Contractor Suspension** – Amends Little Davis Bacon statute to require 3 year debarment for any contractor that interferes with or delays an investigation, or falsifies records, relating to prevailing wage laws. *Effective upon approval.*

HB 2975, SB 2593 **Prevailing Wage Violations** – Provides that each public works project in which prevailing wages are not paid constitutes a single violation for debarment purposes. *Effective July 1, 2008.*

HB 3030, SB 2779 **Emergency Suspension of Prevailing Wage Law** – Clarifies emergency circumstances under which the Governor may suspend Little Davis Bacon prevailing wage laws. *Effective upon approval.*

### **Workforce Development**

HB 3162 HD1, SB 3084 **Workforce Development Council** – Transfers Workforce Development Council from DLIR to Department of Business, Economic Development and Tourism (“DBEDT”), to assist in aligning workforce development with state economic development initiatives. *Effective 2009 (HB 3162 HD 1).*

HB 3169, SB 3091 **Lifelong Learning Accounts** – Establishes Lifelong Learning Account and tax credit program in which employees can contribute to an account to be used for educational or vocational advancement and training, with voluntary employer matching. Amounts contributed annually by employees and employers will be eligible for an annual tax credit. *Effective July 1, 2008.*

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- HB 3076, SB 2998 **Rapid Response Program** – Establishes a rapid response, custom training program, and revolving fund in DBEDT to facilitate rapid training for emerging growth industries and high priority business investments. *Effective July 1, 2008.*
- HB 2959, SB 3253 **Educational Workforce Working Group** – Implements recommendations of Educational Workforce Working Group. Provides for tracking of K-12 students as they move into workforce, establishes coordinator to encourage partnerships between schools and communities, expands running start program, and appropriates funds for adult scholarships. *Effective July 1, 2008.*

**Miscellaneous Employment-Labor**

- HB 2456 **Reciprocal Beneficiaries** – Excludes from a reciprocal beneficiary or domestic partner’s gross income, adjusted gross income, and taxable income the value of health insurance and other benefits provided by an employer. Allows persons to claim a tax exemption for a reciprocal beneficiary or domestic partner. *Effective upon approval.*
- SB 2115 **Reciprocal Beneficiaries** – Clarifies that persons who are related by blood so that they are prohibited from marrying each other need not be in a “spouse-like” relationship to qualify as reciprocal beneficiaries. *Effective upon approval.*
- HB 2974, SB 2594 **Unions (Government and Agricultural Workers)** – Provides that for governmental and agricultural workers covered by HRS Chapters 89 and 377, a union shall be certified as the employees’ bargaining representative based on the receipt of a majority of authorization cards, and specifies that collective bargaining must commence within 10 days after any union is certified as a bargaining representative. *Effective upon approval.*
- SB 2013 **CDL Drivers** – Amends drivers licensing statute to disqualify a commercial driver who tests positive on a DOT drug or alcohol test, until such time as the individual satisfies DOT return-to-duty requirements under 49 CFR Part 40. *Effective September 1, 2008.*
- HB 3167, SB 3089 **Classification of Funds** – Clarifies that the unemployment compensation fund, the workers compensation special fund, the TDI special fund, and the Prepaid Healthcare special premium supplementation fund are to be classified as “trust funds,” rather than “special funds.” *Effective upon approval.*
- HB 2896 **DLIR Language Access Bank** – Establishes a statewide language access bank to be administered by DLIR, to centralize interpretation and translation services for state agencies. *Effective July 1, 2008.*