

HAWAII EMPLOYERS COUNCIL

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Legislative Update: End of Session Is Near

The legislature finished conference committee hearings last week, and is quickly approaching the end of session on May 1, 2008. Here is a quick update on the status of significant labor bills.

Successor Employers (HB 1745 HD3 SD1): Requires the purchaser of a business having 100 or more employees to hire all of the non-supervisory, non-confidential employees of the seller. The House disagreed with the Senate amendments to the bill, and the bill was sent to conference committee. On April 14, 2008, the conference committee conferees were discharged, indicating that the bill is dead. However, there remains a very remote possibility that the House could agree to the Senate amendments, in which case the bill could go forward.

Card Check Bill (HB 2974): Requires employers of agricultural workers as well as other employers outside the jurisdiction of the National Labor Relations Act to recognize a union based upon a showing that the majority of employees signed cards authorizing the union to be their bargaining representative. Eliminates the ability of employees and employers to request a secret ballot election. The bill was passed by the Legislature in March but vetoed by Governor Lingle on April 14, 2008. News reports indicate that the Legislature does not have the votes to override the Governor's veto.

Family Caregiving – TDI Benefits (HB 2520): The House version of this bill (HD3) would have enabled employees to use up to 4 weeks of Temporary Disability Insurance (“TDI”) benefits to care for “family members” with a “serious health condition” as those terms are defined by the Hawaii Family Leave Law. However, the Senate revision of the bill (SD2) converted the bill's purpose to the establishment of a working group to study methods of funding family caregiving leave. Fortunately for employers, the conference committee draft has retained the conversion of the bill to a working group to study methods of funding caregiving leave. Because the final version of the bill (CD1) merely creates a group to study funding methods, this bill is likely to be approved by the Governor.

Workers Compensation IMEs (HB 2929): Would require that claimants and employers/insurers mutually agree upon physicians performing independent medical examinations (“IME's”) as well as impairment rating examinations in workers compensation cases. If the parties cannot agree upon an IME or impairment rating physician, the employer must request that one be appointed by the Director of the Department of Labor and Industrial Relations. The bill

may result in increased workers compensation examination costs. On April 24, 2008, the House agreed with the Senate version (SD1) which made minor technical amendments, and this bill is very likely to be passed by the Legislature and sent to the Governor. Hopefully, this bill will be vetoed by the Governor (a similar bill passed in the 2007 session, was vetoed, and was not overridden). Employers concerned about the bill should write to the Governor to request a veto.

Workers Compensation TTD Benefits (HB 2386): This is a convoluted bill in its current form. The original House bill requires that an employer/insurer pay temporary total disability benefits regardless of a dispute over compensability, and prohibits an employer or insurer from terminating TTD benefits, unless an order denying compensability or terminating benefits is issued by the Director of the DLIR. The final conference committee draft (CD1) creates a working group to be chaired by the Director of the DLIR to study alleged problems associated with employer denials and terminations of TTD benefits, and to make recommendations to the 2009 Legislature. The working group is to consist of representatives from both management and employee groups, including unions. The conference draft provides that if the working group does not reach a consensus on recommendations to the 2009 Legislature, then the bill in its original form (prohibiting termination of TTD benefits by an employer/insurer without an order from the Director) shall take effect on July 1, 2009. Because the bill threatens to increase workers compensation costs and merely delays the effective date to July 2009, concerned employers should write to the Governor to request a veto.

Workers Compensation Medical Benefits (HB 2388): Prohibits employers/insurers from terminating necessary medical benefits without an order of the Director of the DLIR. If the Director determines that medical benefits were improperly paid, the employer/insurer must generally seek compensation from the claimant's health care provider or any appropriate occupational or non-occupational health care insurer. The bill is likely to increase workers compensation costs, by delaying timely terminations of improper or unnecessary medical treatments. The conference committee draft is very likely to pass, since a similar bill was passed in prior legislative sessions, but vetoed by Governor Lingle. Hopefully, this bill will also be vetoed by the Governor, and concerned employers should write to the Governor to request a veto.

Questions about employment-related bills still pending before the Legislature should be directed to Clayton Kamida (ckamida@hecouncil.org, or phone 440-8874).