

LEGISLATIVE Digest



MARCH 13, 2009

2009 – Employment Bills After 1st Crossover

Employment Practices and Employment Rights

- SB 1183 SD2 **Disability Discrimination**- Amends the definition of disability and adds certain definitions to conform Hawaii law to recent federal changes in the Americans with Disabilities Act Amendments. *Effective upon approval.*
- HB 31 **Credit History Discrimination** – Amends HRS Chapter 378 to prohibit discrimination in employment based upon an individual’s credit history, unless the information relates to a *bona fide* occupational qualification (“BFOQ”). *Effective upon approval.*
- SB 1184 SD1 **HCRC Investigations** -Adds definition for a “confidential witness” to Chapter 368 to distinguish confidential witness statements from statements of parties in a complaint filed with the Hawaii Civil Rights Commission. Provides that the Executive Director of the HCRC will determine who qualifies as a confidential witness. *Effective July 1, 2050.**
- SB 688 **Successor Employers** – Where a “divestiture” such as a merger or purchase occurs, SB 1622 SD1 requires successor employer to hire 100% of the non-supervisory and non-confidential employees of the incumbent employer. Prohibits successor employer from requiring incumbent employees to submit job applications. Allows successor to obtain new criminal convictions and drug testing reports. In addition to requirement that employees be retained, SB 1622 requires successor employer to maintain similar level of products and services as seller for 90 days, and prohibits termination of employees for 90 days after sale or merger without “cause.” *Effective July 1, 2009 (SB 688) or upon approval (SB 1622 SD1).*
- HB 319 **Family Leave Notices** –Requires employers to provide annual notices to employees of their rights under the Hawaii Family Leave Law. Also requires employers to notify employees of possible adverse effects of taking family leave. *Effective upon approval.*
- SB 823 SD1
- SB 614 **Military Family Leave** – Grants leave under the Hawaii Family Leave Law to address family care, legal, and financial issues related to the deployment or impending military deployment of the employee’s child, spouse, reciprocal beneficiary, or parent. *Effective July 1, 2009.*
- HB 982 HD3 **HFLI Use By Public Employees** – Establishes a Hawaii Family Leave Law data collection system to collect information on public employees’ use of Hawaii Family leave and information which can be used to improve caregiver services. *Effective July 1, 2020.*
- SB 256 SD2 **Telework Task Force** – Establishes Telework Task Force to develop plan to encourage and expand telework opportunities in Hawaii. *Effective July 1, 2050.*

*NOTE: Bills are often given a “defective” effective date by a committee, to insure that the bill is not passed into law without further consideration and amendment. A proper effective date is later inserted.

Legislative Digest

2009 Bills After 1st Crossover

HB 739 HD2 **TANF Appropriation** – Appropriates funds for employment training programs for Temporary Assistance for Needy Families. *Effective July 1, 2020.*

HB 1125 HD2 **DLIR Funding** – Provides that current funds for TDI, workers’ compensation, and prepaid health care be held in a “trust” instead of a special fund. Appropriates \$5 million from the TDI special funds for the automation of the TDI, workers’ compensation, and prepaid health programs. *Effective July 1, 2020.*

Workers’ Compensation

SB 62 SD1 HD1 **IME Examinations** – Provides that an IME physician in workers’ compensation cases be selected by mutual agreement of the parties or appointed by the Director of DLIR. *Effective July 1, 2009, sunset July 1, 2012.*

SB 63 SD2 **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. When the payment of TTD does not begin within 60 days, claimant entitled to 70% of average weekly wage (rather than 66%) or if claimant’s average wage is less than state average, 100% of actual wage. Establishes working group to make recommendations regarding TTD benefits to legislature at least 20 days prior to start of 2010 legislative session. *Effective July 1, 2009.*

SB 695 SD1 **Medical Benefits** - Requires employers 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, 2009.*

HB 1390 HD2 **Medical Fee Schedule** - Increases allowable charges under medical fee schedule from 110% to 150 % of the Medicare relative value scale. *Effective July 1, 2020.*

HB 442
SB 64 **LIRAB Hearing Officer** – Permits Labor and Industrial Relations Appeals Board (“LIRAB”) to utilize hearings officer for workers’ compensation hearing on matters including treatment plan issues, TTD, and vocational rehabilitation. *Effective upon approval.*

HB 602 **Exclusion for Owners** – Excludes from workers’ compensation coverage owners of LLC with 50% or more interest, partners of partnerships, partners of LLPs with at least 50% interest, and sole proprietors. *Effective upon approval.*

Unemployment Insurance

SB 1664 SD2 **Partial Unemployment Benefits** - Adds definitions relating to partial unemployment and establishes requirements for eligibility, claims filing, registration requirements, and employer reporting. *Effective July 1, 2009, sunsets July 1, 2012.*

HB 332 HD2
SB 782 SD1 **Benefits for Victims of Domestic Violence** – Permits individuals separated from employment (voluntarily or involuntarily) to collect unemployment benefits if separation is due to the employee or the employee’s minor child being a victim of domestic violence. *Effective upon approval.*

Legislative Digest

2009 Bills After 1st Crossover

- SB 1568 SD2 **UI Benefits for Part-Time Work** – Provides UI benefits for employees only seeking part-time work. Authorizes UI benefits where individual voluntarily terminates employment for a “compelling family reason,” including domestic violence, illness or disability of a family member (as defined by U.S. Secretary of Labor), or relocation due to change in spouse’s employment to a location where it is impractical for the employee to commute to work. Effective July 1, 2009.
- HB 987 HD2 **State Comprehensive Employment Training Program** – Permits DLIR to create program giving preference to unemployed individuals for public service jobs – however, such workers would not be subject to state public worker laws. Provides for subsidy to employers who agree to participate in state program to train and hire the unemployed. *Effective July 1, 2020 or earlier if state’s seasonally-adjusted unemployment rate exceeds 7%, but if so, it shall be repealed on June 30, 2010.*
- SB 947 SD1 **UI Conformity** –Conforms state unemployment law to federal law to ensure uniform application of state unemployment insurance experience rating transfers for employers. Recalculates rate when businesses are transferred at the beginning of the calendar year (instead of calendar quarter) immediately following the transfer. *Effective upon approval and retroactive to June 9, 2005.*

Collective Bargaining

- HB 952 HD1 **“Card Check”**- Eliminates secret ballot elections for union certification if a majority of employees provide written authorization for union to be their bargaining representative. Requires initial bargaining within 10 days of recognition. If no initial collective bargaining agreement is reached within 90 days, provides for 20 day conciliation period with Hawaii Employee Relations Board. If no agreement on contract within 110 days, arbitration panel is to decide terms of the parties’ first contract. Applies only to businesses with 100 or more employees. *Effective July 1, 2020.*
- SB 1621 SD2 **“Card Check”**- Eliminates secret ballot elections for union certification if a majority of employees provide written authorization for a union to be their collective bargaining representative. Requires initial bargaining within 10 days of recognition. If no initial agreement is reached within 90 days, matter is referred to Federal Mediation and Conciliation Service (“FMCS”). If no agreement within 120 days, an arbitration panel convened by FMCS shall decide the terms of the parties’ first contract. Creates new representational privilege for information and communications relating to union representation of employees; creates new immunity from criminal prosecution for trespass and offenses against public order for individuals engaged in a labor dispute. *Effective July 1, 2050.*

Public Contracts

- HB 643 HD2 **Unauthorized Aliens**- Prohibits contractors entering into construction contracts from employing persons not authorized to work in the U.S. Provides for penalties, including fines and license suspension for hiring unauthorized aliens. *Effective July 1, 2046.*
- SB 687 SD2 **Bid Disputes** - Clarifies procurement code will require a final decision to be issued within 30 days of the receipt of the request for hearing. Requires a judicial decision

Legislative Digest
2009 Bills After 1st Crossover

within 30 days of the filing of the application for judicial review. In either case, imposes a 30 day limit for resolution or the award of the procurement. *Effective July 1, 2050.*

- HB 1289 HD2 **Public Works Apprenticeship Programs** –Requires all offerors and subcontractors for construction projects subject to the procurement code to maintain or participate in state-approved apprenticeship programs at the time of general bidding. Provides a preference to offerors for construction contracts that maintain a registered apprenticeship agreement at the time of general bidding for a period of not less than 6 months on contracts of \$250,000 or more. Provides a 5% penalty on bid amounts for non-maintenance of an apprenticeship agreement. *Effective July 1, 2020.*
- SB 1125 SD2
- HB 1479 HD2 **Little Davis Bacon -Prevailing Wage Determinations** – Requires DLIR, in making prevailing wage determinations, to make a separate finding of the cost of fringe benefits according to a biannual survey of contractors for health and welfare, pension/annuity, vacation, continuing education, and other fringe benefits. Requires contractors to keep an itemized list of fringe benefit costs paid to each employee. *Effective July 1, 2020.*
- HB 1676 HD1 **Little Davis Bacon** – Requires that when a project financed by a special revenue bond is performed by a contractor who is party to a collective bargaining agreement, the CBA must be submitted to the DLIR in order to dictate the prevailing wages for the project. *Effective July 1, 2020.*
- SB 1181 SD2 **Little Davis Bacon** – Requires that DLIR use a standard reporting form to report the fringe benefit rate paid to both union and non-union workers performing work covered by state Little Davis Bacon Act. *Effective July 1, 2050.*

Health And Insurance

- HB 1749 HD1 **Health Insurance Premium Tax**- Applies insurance premium tax to mutual benefit societies (such as HMSA) and health maintenance organizations. Taxes mutual benefit societies and HMOs for health insurance premiums received through an escalating tax beginning with 1.265% in 2009 and rising to 4.265% in 2013. *Effective July 1, 2020.*
- HB 697 HD1 **Health Coverage for Unemployed** – Establishes in Dept. of Human Services a program for temporary health insurance for unemployed persons not eligible for other health insurance. Benefits provided to be similar to QUEST-Net. *Effective July 1, 2009.*
- HB 690 HD2 **Health Coverage for Part-Time Employees** – Requires insurers to offer same insurance to part-time employees (working at least 15 hours per week) at the rate used for full-time employees of the employer, with the cost of premiums to be borne by the employee. *Effective July 1, 2010, sunset July 1, 2011.*
- SB 591 SD1
- SB 1205 SD2 **Temporary Health Insurance** – Provides temporary health insurance for unemployed individuals who lost their group health insurance. Appropriation to come from general fund. *Effective July 1, 2090.*