

# LEGISLATIVE Digest



HAWAII  
EMPLOYERS  
COUNCIL

APRIL 16, 2009

## 2009 – Employment Bills After 2<sup>nd</sup> Crossover

### Employment Practices and Employment Rights

- SB 1183 SD2 HD2 **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 SD1 **Credit History Discrimination** – Amends HRS Chapter 378 to prohibit discrimination in employment based upon an individual’s credit history or credit report, unless the information relates to a *bona fide* occupational qualification (“BFOQ”). Permits inquiries into credit history or credit report after a conditional offer of employment, but adverse employment action may only be taken if information relates to BFOQ. Makes exceptions for: employers who are expressly permitted or required to inquire into an individual’s credit history under law; “managerial or supervisory employees”; and financial institutions insured by a federal agency. *Effective July 1, 2050.\**
- HB 332 HD2 SD1 **Successor Employers** – Where a “divestiture” such as a merger or purchase occurs, requires successor employer to hire 100% of the non-supervisory and non-confidential employees of the incumbent employer. Enables successor to avoid retention of all employees if it can prove new business is “substantially dissimilar,” or that its staffing needs are reduced and that staff has been reduced proportionally. Prohibits successor employer from requiring incumbent employees to submit job applications. Allows successor to obtain new criminal convictions and drug testing reports. SB 688 provides a general excise tax exemption to successor employers for 1 year. *Effective July 1, 2050 (SD1).*
- HB 319 HD1 SD1 **Family Leave Notices** – Requires employers to post notices to employees of their rights under the Hawaii Family Leave Law in a form prescribed by the Director. *Effective upon approval (HB 319) or July 1, 2112 (SB823).*
- SB 823 SD1 HD1
- HB 982 HD3 SD1 **HFLL 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, 2050.*
- HB 1260 HD1 SD1 **Elimination of HIOSH** – Abolishes Hawaii Occupational Health and Safety Law; transfers various governmental bodies and services from DBEDT to other parts of executive branch. *Effective July 1, 2090.*
- HB 739 HD2 SD2 **TANF Appropriation** – Appropriates funds for employment training programs for Temporary Assistance for Needy Families. *Effective July 1, 2009.*

**\*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.

**Workers' Compensation**

- SB 62 SD1 HD2 **IME Examinations and Coverage for LLCs and Partnerships** – Provides that IME physicians in workers' compensation cases must be selected by mutual agreement of the parties or appointed by the Director of DLIR. Provides that the rating examination will occur after claimant's physician determines claimant has reached medical stability. HD2 adds provisions which exclude services of sole proprietors, partners of partnerships and LLPs, and majority owners of LLC's from workers compensation coverage. *Effective July 1, 2009, sunsets July 1, 2012.*
- SB 695 SD1 HD1 **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.*
- ACT 003  
(HB 442) **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.*

**Unemployment Insurance**

- SB 1664 SD2 HD2 **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.*
- SB 1568 SD2 HD1 **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.*
- 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 SD2  
SB 1621 SD2 HD2 **"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. Provides penalty of up to \$20,000 per violation for willful or repeated prohibited conduct. *Effective upon approval (HB 952), or July 1, 2010 (SB 1621).*

**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, 2075.*
- HB 1479 HD2 SD1    **Little Davis Bacon -Prevailing Wage Determinations** – Requires contractors to report on a weekly basis the fringe benefits (health and welfare, pension/annuity, vacation, continuing education, and other fringe benefits) on a form provided by the DLIR. Requires contractors to keep an itemized list of fringe benefit costs paid to each employee. *Effective July 1, 2050.*
- HB 1676 HD1 SD2    **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, 2077.*

**Health And Insurance**

- HB 690 HD2 SD2    **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 upon approval, sunset July 1, 2011.*
- SB 1205 SD2 HD3    **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.*