

# LEGISLATIVE Digest



FEBRUARY 6, 2009

## 2009 – Employment Bills Introduced

### Employment Practices and Employment Rights

- SB 132 **HCRC Statute of Limitations** – Eliminates 180 day statute of limitations period for filing charges with the Hawaii Civil Rights Commission (HCRC).
- HB 1480, SB 1183 **Disability Discrimination** – Amends the definition of disability and adds certain definitions to conform Hawaii law to recent federal changes in the Americans with Disabilities Discrimination Amendments Act.
- 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”).
- HB 1478, SB 1184 **HCRC Investigations** – Adds definition for a “confidential witness” to Chapter 368 to distinguish confidential witness statements from statements of parties to a complaint filed with the Hawaii Civil Rights Commission.
- SB 376 **Wrongful Termination** – Authorizes new cause of action under HRS 378-32 to allow employees to file a complaint with the DLIR if they are terminated after their probationary period for other than good cause.
- HB 396, SB 688 **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. Prohibits successor employer from requiring incumbent employees to submit job applications. Permits successor to avoid hiring 100% of the incumbent employees if (1) the new business is substantially dissimilar or (2) the human resources needs are reduced, provided that the number of dislocated employees be proportional to the reduction in total human resource needs.
- HB 319, SB 823 **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.
- HB 450, HB 720, 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.
- HB 982, SB 822 **HFLL Coverage** – Extends coverage of the Hawaii Family Leave Law to employers with 50 or more employees. Establishes a family leave data collection system to provide benefit information to employees.
- SB 816 **Family Leave for Public Employees** – Allows public employees to use 2 weeks of family medical leave and any vacation or sick leave accrued for parental leave, defined as the birth or adoption of a child.

- HB 1687 **Mandatory Paid Sick Leave** – Establishes Hawaii Paid Sick Leave Law. Requires employers to provide paid sick leave for employees to be earned at the rate of 1 hr. for every 30 hours worked. Requires that employers allow unused sick leave of up to 40 hours to be carried over to following year for small businesses with less than 10 employees, and up to 72 hours for other employers, unless collective bargaining agreement provides otherwise. Permits employee to use paid sick leave to care for child, parent, guardian, sibling, grandparent, grandchild, spouse, registered domestic partner, or other designated person.
- HB 898, SB 255 **Telecommuting Tax Credit** – Provides an income tax credit to employers for telecommuting in 2010 and 2011, based on a percentage of telecommuting expenses (such as purchase of computers, software, modems, and other equipment, as well as installation, delivery, and maintenance fees). Credits are graduated based on location of employer's principal place of business and days per month which an employee telecommutes. Also provides for one-time credit of up to \$20,000 per employer during implementation year.
- HB 1802 **Telecommuting Tax Credit** – Provides telecommuting tax credit based on percentage of employer's additional costs incurred for telecommuting workers, multiplied by number of employees who telecommute.
- HB 1502, SB 256 **Telework Task Force** – Establishes Telework Task Force to develop plan to encourage and expand telework opportunities in Hawaii.
- SB 138 **Exemption for SSDI Recipients** – Exempts individuals receiving social security disability benefits who participate in a work incentive or employment support program of the Social Security Administration from the coverage of state unemployment insurance, TDI, workers' compensation, and prepaid health laws.
- HB 479 **Dislocated Workers** – Requires DLIR to compile a report prior to the 2010 session regarding the effectiveness of the 2007 Dislocated Worker Act amendments (Act 5 of 2007 1<sup>st</sup> Special Session).
- HB 1215, SB 1067 **Hiring Unauthorized Aliens** – Prohibits employers from hiring aliens not authorized to work in the U.S., and authorizes the state to refuse to renew, or to deny, revoke, or suspend the professional or vocational license of an entity found to be employing illegal aliens.
- HB 1216, SB 465 **Hiring Unauthorized Aliens** – Creates criminal penalties for employers who knowingly accept false documents authorizing aliens to work in the United States; creates criminal penalties for the offense of trafficking in work authorization documents.
- HB 1309 **Employee Increase Tax Credit** – Provides tax credit for employers who increase the number of employees over the number employed in the prior year. For each new employee working at least 400 hours, the credit shall be up to 40% of the wages paid up to a maximum of \$8,500, and for employees working between 120-399 hours, the credit shall be 25% of the wages paid up to a maximum of \$8,500.
- HB 1363, SB692 **Pension Vesting** – Where an employee has vested under a pension plan, requires employers to pay pension benefits upon disability, regardless of employee's age at time of disability. Also permits Director of DLIR to reopen the settlement in any workers' compensation case where the settlement was obtained by fraud, or by undue influence as a result of the disability or mental incompetence of the employee.

- SB 320 **Tip Credit** – Requires that businesses pay tipped employees the minimum wage of \$7.25 and requires that tipped employees be paid a combination of tips and wages that is at least 50 cents above the minimum wage.
- SB 432 **Tip Credit** – Establishes tip credit formula that requires tipped employee to be paid an hourly amount of not less than 25% below the minimum wage, so long as the employee’s combined wages and tips are at least 50 cents above the minimum wage.
- HB 315 **Vog Safety** – Requires DLIR to establish safety standards during “high incidences” of vog or sulfur dioxide.
- HB 81 **Lifelong Learning Accounts** – Establishes commission within DLIR to attract and retain baby boomers in workforce. Establishes Lifelong Learning Accounts (“LILA”) program within DLIR, and provides tax credits for employers contributing to LILA accounts for employees.
- HB 1128,SB 946 **Lifelong Learning Accounts** – Establishes Lifelong Learning Accounts program in DLIR to manage employee and employer contributions to LILA accounts.
- HB 739 **TANF Appropriation** – Appropriates funds for employment training programs for Temporary Assistance for Needy Families.
- HB 787 **Public Employee Whistleblowers** – Provides additional protections to public employee whistleblowers. Includes protections for a report that a public official or employee has acted in the performance of their official duties in a manner that is economically wasteful, or involves gross misconduct, incompetence, or inefficiency. Also protects reports of a condition that may significantly threaten the health or safety of the public or the public employee.
- HB 872 **Federal Violence Against Women Act** – Established pilot program with Dept. of Health to provide undocumented aliens who are victims of domestic violence or sexual assault with assistance, including placement for employment with employers.
- HB 1814 **Mandatory Overtime for Nurses** – Prohibits public and private hospitals from forcing nurses to work overtime, except in case of a federal, state, or county-declared emergency.
- HB 955 **Criminal Record Checks for County Employees** – Permits counties to perform state and national criminal record checks on applicants who work with vulnerable adults or senior citizens in community programs, or work in the fire department in positions involving contact with children and dependent adults, or who work for emergency management positions involving the security of their jurisdiction, the state, or the U.S.
- HB 1125 **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.

HB 1759 **Work Opportunity Tax Credit** – Provides tax credit for employers who hire any of 9 categories of individuals, including long-term recipients of temporary assistance for needy families, persons receiving supplemental nutrition assistance program benefits, and persons between 18 and 39 residing in an empowerment zone, renewal community, or rural renewal county, and others covered by the federal work opportunity tax credit.

**Workers' Compensation**

HB 1288, SB 62, SB 307 **IME Examinations** – Provides that an IME physician be selected by mutual agreement of the parties or appointed by the Director of DLIR.

HB 403, SB 63, SB 310 **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.

HB 1279, SB 695 **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.

SB 306 **Elimination of Statute of Limitations** – Eliminates statute of limitations for the filing of workers' compensation claims.

SB 305 **Workers' compensation Bill of Rights** – Creates Workers' compensation Injured Workers Bill of Rights. Provides guarantees for selecting treating physician, prompt hearing, consideration of loss of earning capacity in determining benefits, increased vocational rehabilitation services, impairment and disability rating that includes chronic pain and depression, entitlement to non-party IME physician, and other protections.

HB 1390 **Medical Fee Schedule** – Increases allowable charges under medical fee schedule from 110% to 150 % of the Medicare relative value scale.

HB 314 **Vog Coverage** – Requires DLIR to create workers' compensation rules covering vog-related medical conditions. Requires DLIR to submit report to Legislature before 2010 session.

HB 442, SB 64 **LIRAB Hearing Officer** – Permits LIRAB to utilize hearings officer for workers' compensation hearing on matters including treatment plan issues, TTD, and vocational rehabilitation.

SB 40 **Exclusion for LLC Owners** – Excludes persons with 50% or more interest in LLC from requirement of workers' compensation coverage for him/herself.

HB 602, HB 1126,  
SB 944 **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.

HB 1308, SB 1063 **Coverage for Self-Employed** – Excludes from workers' compensation coverage any self-employed individual and their family member working for the business.

- HB 607 **Injuries Exacerbated by Recreational and Social Activities** – Excludes from workers’ compensation coverage the exacerbation of an existing work injury through voluntary participation in after-work, employer-sponsored voluntary recreational or social events.
- SB 319 **Exclusion for Recreational and Social Activities** – Excludes from workers’ compensation coverage injuries resulting from voluntary participation in after-work, employer-sponsored voluntary recreational or social events
- SB 321 **Stress Claims and Acts of Violence** – Removes workers’ compensation coverage for stress claims and injuries resulting from any act of violence; establishes workers’ compensation fraud hotline; requires designation of deputy attorney general to investigate and prosecute workers’ compensation fraud claims.
- HB 1500 **Soft Tissue Injuries** – Creates pilot program in Department of Human Resources Development to monitor workers’ compensation cases involving soft-tissue injuries which have been open for more than 6 months.
- HB 1828 **Insurers** – Requires workers’ compensation insurers to use rates that are proportional to the number of employees.

**Unemployment Insurance**

- SB 1664 **Partial Unemployment Benefits** – Adds definitions relating to partial unemployment and establishes requirements for eligibility, claims filing, registration requirements, and employer reporting.
- HB 332, SB 782 **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.
- HB 461, SB 628 **Benefits for Spouses of Military Members** – Provides unemployment benefits for spouses of full-time military members when the spouse must separate from employment due to a military duty reassignment of the military member.
- SB 272 **Exclusion from Income Tax** – Excludes unemployment benefits from state income tax.
- HB 528, HB 987 **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.
- HB 478, HB 1127, SB 945 **UI Fund Reserve** – Makes permanent the 1.0 adequate reserve ratio (rather than 1.5) established in Act 110, and the 75% of average weekly wages (rather than 70%) as the maximum weekly benefit amount.
- SB 339 **Benefits for Owners** – Provides that owner-employee of a corporation or LLC with an interest of at least 50% may collect unemployment benefits when a “voluntary” business closure occurs after the owner-employee has attempted to revive or restart a failed business, or has started a new business, or when closure is necessary because of a “bona fide” business failure.

- SB 353 **Family-Owned Corporations** – Allows family-owned corporations which employ only family members, and in which one family member owns 100% of the stock , to elect to be excluded from coverage under the state unemployment insurance law.
- SB 373 **Increase in Taxable Wage Base** – For 2010, changes the taxable wage base to the state average annual wage in the 4 quarters of the prior year.
- SB 371 **Reduction of Taxable Wage Base** – Reduces taxable wage base for unemployment insurance to no more than \$7000 per employee.
- HB 1129, SB 947 **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.

#### **Collective Bargaining**

- HB 952, HB 1769 **“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 120 days, arbitration panel is to decide terms of the parties’ first contract. HB 1769 specifies that statute will apply to agricultural laborer whose employer’s business generates more than \$10 million in annual revenue.
- SB 1621 **“Card Check”** – Eliminates secret ballot elections for union certification if a majority of employees provide written authorization for union to be their collective bargaining representative. Requires initial bargaining within 10 days of recognition. If no initial collective bargaining agreement is reached within 120 days, arbitration panel is to decide 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 offense against public order for individuals engaged in an employment dispute.

#### **Public Contracts**

- HB 513 **Public Works** – Requires contractors bidding on state construction contracts to employ only employees working at least 20 hours per week and covered by the Prepaid Health Care Act, and maintain an apprenticeship program. Provides for penalties for violation, including suspension and debarment.
- HB 643, SB 527 **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.
- HB 1355, SB 1210 **Procurement** – Establishes preference for bidders on contracts who pledge to hire individuals with disabilities and certain recipients of temporary assistance to needy families.

- HB 826 **Public Works Apprenticeship Programs** – Requires that public works contractors maintain apprenticeship programs. Requires that projects of more than 1 million must have at least 15% of hours performed by apprentices.
- HB 1289 **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.
- HB 1280 **Public Works Contractors** – Enacts Responsible Construction Contractor Law, requiring contractors to maintain apprenticeship programs, provide prevailing wages, provide health insurance, maintain workers’ compensation insurance, commit to a workforce of at least 80% Hawaii residents, and provide employees with a “fair and neutral” process for resolving workplace issues.
- SB 514 **Procurement Preference** – For counties with a population of 250,000 or less, establishes a procurement preference for contractors that are headquartered in the county where the construction project is to take place.
- HB 1479 **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.
- HB 1676 **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.
- SB 1181 **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.

**Health And Insurance**

- HB 548, HB 697 **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.
- HB 690, SB 591 **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.
- SB 173 **Universal Health Coverage** – Creates tax credit for employers to provide prepaid health insurance to part-time employees. Mandates creditable health insurance coverage for all Hawaii residents. Creates state health insurance purchasing pool for individuals without access to creditable coverage.
- HB 914 **Coverage for Uninsured** – Creates the “Cover Hawaii Health Care Access Program” to provide affordable health coverage to the uninsured. Plan would permit enrollee to receive coverage regardless of employment status or cost-sharing of premiums.

- SB 317 **Prepaid Health Repeal** – Repeals the Hawaii Prepaid Healthcare Act.
- SB 340 **Medical Savings Accounts** – Establishes medical savings accounts, and allows employer to contribute up to \$3000 to each employee’s medical savings account, which amount will be deductible from the employer’s taxable income.
- HB 1343,SB 1204 **Long-Term Insurance Credits for Small Businesses** – Provides that businesses with less than 100 employees will receive tax credits at the lesser of 50% of premiums or \$500 per employee for the purchase of long-term care insurance for employees.

**Miscellaneous**

- HB 444, SB 458 **Civil Unions** – Extends same rights, benefits, and protections of spouses in a marriage to partners in a civil union.
- HB 878 **Marriage** – Redefines marriage as being between two persons, rather than between a man and woman.
- HB 309 **Marriage** – Recognizes marriages that are valid in country of origin, whether or not heterosexual in nature.
- HB 508 **Vehicle Insurance** – When a business utilizes a delivery driver who uses his/her own vehicle, requires the business to provide commercial vehicle insurance or self-insure the driver’s vehicle.
- HB 1161 **CDL Licenses** – Conforms state law to federal law. Provides that courts can no longer permit CDL drivers convicted of DUI to operate commercial vehicle based on hardship.
- HB 1162 **CDL Licenses** – Conforms penalties for violating an out-of-service order to federal regulations; provides penalties for operating a commercial vehicle with an alcohol level of 0.04% or more, and imposes penalty for operating a commercial vehicle with any amount of alcohol concentration.
- HB 615 **Harassment** – Amends criminal harassment statute to include the repeated making of any form of digital communication without a legitimate purpose.
- HB 622 **Harassment** – Amends criminal stalking law to include the repeated making of any form of digital communication without a legitimate purpose.
- HB 886 **Smoking** – Authorizes liquor commission to issue citations for smoking violations, makes compliance with no-smoking laws by nightclubs and restaurants a requirement for renewal of liquor licenses.
- SB 1347 **Smoking** – Allows smoking in properly licensed establishments. Requires collection of licensing fees with proceeds to go towards organ donation and tobacco education.