



Hawaii Employers Council

January 2009

2009 Bills Pose Challenges for Employers

Despite the state and nation's continuing economic difficulties, Hawaii's legislators have introduced many employment-related bills this year which could have significant adverse effects on businesses. The major areas of legislative interest involve successor employers, union organizing, workers compensation reform, family leave, and unemployment insurance changes. The following bills, although only a portion of the employment-related bills introduced, are likely to receive the most attention by legislators this year.

Successor employers: HB 396 and SB 688 will require purchasers of businesses in Hawaii to hire 100 percent of the seller's non-supervisory employees, except under certain limited circumstances. Similar bills have been introduced in prior years, and have been consistently opposed by employers. The House Labor Committee heard HB 396 on Friday, January 30, 2009, indicating there is significant interest in the bill.

Union Organizing: HB 952, HB 1791, and SB 1621 include provisions similar to the "card check" bill which was introduced last year and came very close to passing. These bills are modeled on the federal Employee Free Choice Act ("EFCA"), which passed the U.S. House of Representatives last year and will be considered by Congress again this year. The Hawaii bills will allow unions to organize those employers not covered by the National Labor Relations Act by obtaining union authorization cards from a majority of the employer's workers, and will eliminate the employer's prerogative to request a secret ballot election. Moreover, the bills provide that if a union and a newly-organized employer do not reach agreement on an initial collective bargaining agreement within 120 days after the union becomes the bargaining representative, the terms of the initial contract will be established after a hearing before an arbitration panel. SB 1621 goes much further than the EFCA and last year's card check bill by creating a new "union representational privilege" which will allow unions to refuse to disclose any documents relating to their representation of employees, and by granting immunity from prosecution for criminal trespass and offenses against public order to employees and union representatives who are engaged in a labor dispute with an employer. Like last year's card check bill, these measures are likely to be vigorously opposed by employers again this year.

Workers' Compensation: The various workers' compensation bills introduced this year mirror reform measures previously introduced in 2008, 2007, and 2006. HB 403, SB 63, and SB 310 will require employers to pay temporary total disability ("TTD") benefits regardless of whether entitlement to benefits is disputed by the employer, and permits termination of TTD benefits only after a hearing and decision by the Director of the DLIR. Similarly, HB 1279 and SB 695 require employers/insurers to continue to pay for medical treatments authorized by the claimant's physician unless there is a hearing

and decision by the Director of the DLIR terminating such treatments . HB 1288, SB 62, and SB 307 will require employers/insurers and claimants to agree on the physician who is to conduct an independent medical examination (“IME”), and if they cannot agree, the IME physician will be selected by the DLIR. SB 305 establishes a “Bill of Rights” for workers’ compensation claimants, which includes the right to a prompt hearing on claims, consideration of loss of earning capacity in determining disability benefits, increased vocational assessment and vocational rehabilitation services, the right to a disability rating which includes an assessment of chronic pain and depression, and other similar requirements. Finally, SB 306 is a proposal to eliminate the statute of limitations for workers’ compensation claims.

Hawaii Family Leave: Bills designed to offer new military family leave provisions, require that employees be given annual notices of the right to family leave, and extend Hawaii Family Leave Law (“HFLL”) coverage to employers having 50 or more (instead of the current 100 or more) employees have been introduced. HB 450, HB 720, and SB 614 are based on the recent military leave changes to the FMLA, and will allow employees to take Hawaii Family Leave in order to address family care, legal, and financial issues related to the military deployment of the employee’s child, spouse, parent, or reciprocal beneficiary. Both HB 450 and HB 720 were already heard by the House Economic Revitalization, Business, and Military Affairs Committee on January 29, 2009.

HB 319 and SB 823 will require employers to give annual written notice to employees of their rights under the HFLL. HB 982 and SB 822 will extend the coverage of the HFLL to employers with 50 or more (instead of 100 or more) employees.

Unemployment Benefits: Some of the introduced bills are designed to increase benefits or increase the scope of coverage for unemployment benefits. HB 461 and SB 628 will provide UI benefits to spouses of military members when the spouse must leave work due to the military duty reassignment of the military member. HB 332 and SB 782 will provide unemployment benefits to individuals voluntarily or involuntarily separated from employment if the job loss is due to circumstances arising from the employee or employee’s minor child being a victim of domestic or sexual violence. SB 373 would undo Act 110 (passed in 2007) and for the year 2010, increase the maximum taxable unemployment insurance wage base for each employee from \$13,000 to the employee’s actual average annual wage for the tax year.

There are also bills which are either business-friendly or likely to be neutral in terms of their effects on employers. HB 1127 and SB 945 makes permanent the reduction in the reserve ratio for the unemployment insurance fund and the increase in maximum benefits to 75% of the average weekly wage enacted by Act 110 in 2007. HB 548 and HB 697 will provide health insurance coverage for unemployed workers, which will be funded out of the General Fund.

Miscellaneous Bills: Each year there are a number of bills introduced which clearly would have a negative impact on employers, but whose likelihood of success is extremely difficult to gauge. The following bills should be watched, but are unlikely to get far this session.

SB 376 is a proposal to eliminate the rule of “at-will” employment and allow employees to file wrongful termination claims if they have passed their probationary period and were not terminated for “good cause.” SB 132 will eliminate the current 180 day statute of limitations period for filing claims of discrimination and harassment with the Hawaii Civil Rights Commission.

More information on the following bills can be found by utilizing the Legislature’s website:

<http://www.capitol.hawaii.gov/site1/docs/docs.asp?press1=docs>

Stay tuned for an upcoming summary of all employment-related bills introduced this session. Questions on any of the foregoing bills should be directed to General Counsel Clayton Kamida (email: ckamida@hecouncil.org, ph. 440-8874), or Assistant General Counsel Sheri Lau Clark (email: slauclark@hecouncil.org, ph. 440-8823).