

# LEGISLATIVE Digest



MARCH 5, 2010

## 2010 – After First Crossover

### Employment Practices and Employment Rights

- SB 2341 SD1 **Employer Practices; Domestic Violence** – Amends HRS § 378-2 to prohibit employment discrimination against someone because of his or her “domestic victim status.” Defines “domestic abuse victim” as an individual who is the victim of “domestic abuse” as defined in the Victims Leave Law, HRS § 378-71. *Effective upon approval.*
- ~~HB-1939~~
- SB 2369 SD2 **Domestic Violence Omnibus** – Requires the unemployment compensation staff to be trained on domestic violence so they can properly identify and adjudicate those cases. Requires the Department of Labor and Industrial Relations (“DLIR”) to give claimants notice about their right to obtain unemployment benefits for separation from employment due to a “compelling family reason” as provided in HRS § 383-7.6.
- ~~HB-2353~~

**Employment Practices** – Amends Section 378 to prohibit employment discrimination because the employer perceives the individual to be a victim of “domestic or sexual violence.” Requires employers to provide a “reasonable safety accommodation” requested by the victim, unless an undue hardship can be shown. Permits employers to require the individual to provide certification that the individual is a domestic or sexual violence victim by providing a police report, protective order, or other documentation from an attorney, law enforcement office, health care professional, licensed mental health professional or counselor, member of the clergy or victim services provider that the individual was or is undergoing treatment or counseling, obtaining services, or relocating as a result of domestic or sexual violence or stalking. Specifies damages for such discrimination as: (1) back wages plus interest; (2) compensatory damages (future pecuniary losses, pain and suffering, loss of enjoyment of life); punitive damages of 3 times actual damages max; and equitable damages (reinstatement/promotion). Statute of limitations is 2 years.

**Victims Leave** – Amends the Victims Leave Act to require *all* employers regardless of size to provide 30 days of leave within a 12-month period. Requires employers to continue its share of group health care coverage for the employee for the time of leave.

Allows employers to avoid reinstating a salaried employee who is among the highest paid 10% of the employees employed by the employer within 75 miles of the facility. Prohibits discrimination/retaliation for taking leave, opposing any unlawful practice, filing a charge, instituted a proceeding, gives or is about to give any information in connection with any inquiry or proceeding relating to victims leave, or testified or is about to testify concerning victims leave rights. Allows the *employee* (not the employer) to elect to use paid leave for victims leave.

**\*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.

**Emergency Leave** – creates new section within Chapter 378 to grant employees “emergency leave” so that Leave under the Victims Leave Act can be paid by the Department of Human Services from the spouse and child abuse special account. *Effective July 1, 2010.*

SB 2383 **Dislocated Workers** – Authorizes DLIR to exercise enforcement powers against an employer who fails to comply with the notice provisions of the Dislocated Workers Act.  
~~HB-2636~~ *Effective upon approval.*

SB 2564 SD1 **Hawaii Civil Rights Commission; Confidential Witness** – Defines “confidential witness” as “a person who is not a complainant or respondent to a complaint filed with the commission and who requests that the person’s identity or statement be kept confidential. . . .” Expressly allows the Hawaii Civil Rights Commission (“HCRC”) to use witness statements in the investigation, conciliation, and litigation of complaints filed by the commission or as ordered by a court or hearings examiner. *Effective July 1, 2010.*  
~~HB-2379 HD1~~

SB 2565 SD1 **Hawaii Civil Rights Commission; Disability Discrimination** – Extends the deadline for HCRC to adopt new rules regarding disability discrimination to six months after the EEOC publishes their final rules concerning the Americans with Disabilities Act Amendments Act of 2008. *Effective upon approval.*  
~~HB-2380~~

SB 2883 SD1 **Sick Leave** –Amends HRS § 378-32 to prohibit discrimination against an employee who uses accrued and available sick leave. **SB 2883 SD1** amends the temporary disability insurance (“TDI”) law to prohibit sick leave discrimination. Whenever there is a conflict between a collective bargaining agreement and any of the house rules or policies adopted by the employer, the terms of the collective bargaining agreement shall prevail. *Effective upon approval.* **HB 2935 HD3** prohibits employers with collective bargaining agreements and who have 100 or more employees from discriminating against an employee solely because he or she legitimately uses negotiated sick leave in accordance with the employer’s attendant and negotiated sick leave policies, except for abuse of sick leave. It also specifies that this prohibition does not apply to instances where an employee is unable to fulfill the essential job functions because of the use of sick leave. *Effective on July 1, 2020.*  
HB 2935 HD3

### **Workers’ Compensation (“WC”)**

SB 2050 **Vocational Rehabilitation** – Corrects a drafting error in the law by requiring a provider in its rehabilitation plan to determine if modified or other work with the *same* employer (current law states “different” employer) represents suitable gainful employment. *Effective July 1, 2010.*  
~~HB1857~~

SB 2339 SD1 **Claims Proceedings** – When the employer denies compensability or indicates compensability is not accepted, the employer must submit a written report to the director and claimant that describes the employer’s internal investigation and supports details substantiating the employer’s denial of compensability. This report must be submitted within 30 calendar days, with no extensions. *Effective upon approval.*  
~~HB-2079~~

SB 2566 **Medical and Rehabilitation Benefits** – Clarifies that a physician or surgeon may conduct diagnostic testing or engage in a one-time consultation for a subspecialty diagnostic evaluation and treatment recommendations from a board certified or licensed specialist. Prohibits the employer/insurer from contesting the claimant’s request for a test or consultation. *Effective upon approval.* **HB 2637 HD1** inserted a defective date of July 1, 2020 and made technical amendments.

SB 2597 **Hawaii Employers Mutual Insurance Company** – Clarifies that the Hawaii Employers Mutual Insurance Company shall not have any additional third-party duty nor incur any additional liability toward members or beneficiaries beyond that explicitly created by statute. *Effective July 1, 2010.*

### Unemployment Insurance

SB 2323 **Online Registration; Partial Unemployment** – Prohibits DLIR from requiring online registration of availability to work. *Effective upon approval.*  
~~HB 2202 HD1~~

SB 2324 SD2 **Disqualification; Part-Time Work** – Allows claimants who had been receiving “partial unemployment” benefits to remain eligible for UI benefits even after separating from part-time employment if the claimants are still attached to a regular employer that is not offering work. **SB 2324 SD2** clarifies that claimants are allowed to maintain initial UI benefits connected to the original full-time employer, but the employee could be denied all UI benefits connected to the subsequent part-time work. Requires the claimant’s wages from the regular employer to which the individual is attached to be at least 75% of the total wages in the base period of the current claim during which the separation from the employer offering part-time employment occurred. *Effective July 1, 2050.* **HB 2257 HD2** makes clear that UI benefits resulting from the claimant’s status of being attached to the regular employer that is not offering work is not jeopardized by separation from the subsequent part-time employment, even if the claimant’s separation from the part-time employment was involuntary for good cause or voluntary without good cause. *Effective July 1, 2010.*

SB 2549 SD1 **Reed Act Funds; Workforce Investment Board** – Redirects \$5 million of unappropriated Reed Act funds to the workforce investment boards on the islands of Oahu, Maui, Kauai, and Hawaii. Amends the appropriation to be used by the workforce development council. Repeals the appropriation allocated to the DLIR for administrative expenses. *Effective July 1, 2050.*  
~~HB 2711~~

HB 2169 HD2 **Contribution Rate** – Lowers employers’ contribution rate to the UI fund by:

- Adjusting the tax schedule to:
  - 2010: D (instead of F)
  - 2011: F (instead of H)
- Amending the taxable wage base to 90% of the average annual wage for 2010 and 2011.
- Amending the adequate reserve to 1 times the benefit cost rate times total remuneration (currently it is 1.5 times)

Sets the maximum weekly benefit at 75% the average weekly wage until January 1, 2012. Also authorizes special assessments upon employers to pay the interest and principal costs on federal loans. *Effective upon approval with retroactive application to January 1, 2010 for determinations of the employer's contribution rate and wage base.*

HB 2702 HD1 **Contribution Rate** – Requires DLIR to:

- Study the cost and feasibility of changing to a semi-annual contribution rate schedule.
- Reassess the auditor's recommendations in the 1983 study entitled “Study of the Financing of the Unemployment Compensation Fund of the State of Hawaii.”
- Review the fairness and equitability of the contribution rate schedule.
- Submit reports to the legislature no later than 20 days prior to the 2011 legislative session.

Also assigns a reserve ratio rate of 0.0800 to 0.0899 (instead of 0.000) to employers who begin operations during the 2010 calendar year, which effectively reduces the UI tax rate for the new employers. The lower rate would be applicable for 2010 and 2011. *Effective July 1, 2020.*

### **Public Contracts**

SB 2840 SD2 **Public Works; Construction; Hawaii Residents Preference** – Adds a new chapter to require at least 80% of workers on public works and construction contracts to be Hawaii residents. The 80% is determined by dividing the total number of hours worked on a contract by residents by the total number of hours worked by all employees of the contractor on the contract. Hours worked for the subcontractor counts toward the calculation. This bill would not apply to procurements for professional services under section 103D-304, procurements for small purchases under chapter 103D-305, and subcontracts of \$50,000 or more in connection with any general contract otherwise covered by the bill. **SB 2840 SD2** expands §1 of the bill to: (1) cite the connection of high UI rates in the construction industry; (2) explain the unique geography of Hawaii which makes it difficult for Hawaii residents to find jobs elsewhere; and (3) note that there have already been incidences where nonresidents were hired for State work. The Senate's version also requires contractors to provide a monthly certification of compliance with the labor force requirement. *Effective July 1, 2050.* **HB 2736 HD1** defines “shortage trade” as “construction trade in which there is a shortage of Hawaii residents qualified to work in the trade.” *Effective upon approval.*

HB 2897 HD1 **Contractors Licensing; Unauthorized Aliens** – Permits the licensing board to revoke, suspend, or refuse to renew a contractor's license if the contractor knowingly or intentionally employs a person who is not eligible to work in the U.S. (Current law permits such board action for public works contractors, but not for all contractors). *Effective December 21, 2058.*

**Health And Insurance**

SB 2271 SD2 **Health Insurance Premiums** – Adds a new chapter that creates the “Medical Data Clearinghouse” under the insurance division of DCCA. Requires health insurers to report annually how health care premiums are spent (administrative costs, medical expenses, profits, travel, lobbying, etc). Also requires insurers to spend a minimum of 65% of premiums on medical expenses, which is the amount currently enforced upon mutual benefit societies. *Effective July 1, 2050.*

SB 2698 SD2 **Dependent Coverage** – Requires health insurers to extend dependent coverage up to 27 years old. *Effective July 1, 2010.*  
~~HB 2545~~

SB 2885 SD2 **Health Savings Accounts Task Force** – Establishes a task force within DLIR to evaluate the current state of health savings accounts options in Hawaii's health insurance market and to explore ways to expand access to these accounts in Hawaii. The task force is comprised of:  
~~HB 2206 HD1~~

- Director of DLIR
- 4 members of the Hawaii Prepaid Health Care Advisory Council;
- 3 members or employees of the Hawaii Medical Association;
- 3 representatives from the health insurance industry;
- 4 representatives from non-government employee unions;
- 1 representative from First Hawaiian Bank; and
- 4 representatives from other interested organizations or stakeholders, at the discretion of DLIR.

*Effective July 1, 2050.*

HB 2852 HD1 **Insurance Premium Tax; Applicability to Mutual Benefit Societies & Health Maintenance Organizations** – Temporarily makes the insurance premium tax applicable to mutual benefit societies and health maintenance organizations from July 1, 2010 to June 30, 2015. Establishes a medical and health promotion tax credit that may be claimed against the insurance premium tax. Excludes from the insurance premium tax an association or society that operates solely as a nonprofit medical indemnity or hospital service association or society. *Effective on July 1, 2010, and shall be repealed on June 30, 2015; provided that sections 431:7-202(a), 431:7-204, 432:1-403, and 432D-19(d), Hawaii Revised Statutes, as amended by sections 3, 4, 5, and 6, respectively, of this Act shall be reenacted in the form in which they read on the day before the effective date of this Act.*

**Miscellaneous**

SB 1062 SD1 **Professional Employer Organizations** – Creates a new chapter to:  
(CARRYOVER)

- Require PEOs to register with DCCA and disclose management information and financial condition, eligibility to do business in the State, and compliance with the relevant insurance laws such as workers' compensation, TDI, prepaid health care act, and UI;

- Require PEOs to post a bond in the amount of \$1,000,000;
- Specify certain exemptions from registration and bond requirements (e.g., temporary help services are not considered PEOs); and
- Authorize DCCA to adopt rules to implement registration of PEOs.

*Effective immediately, but the registration requirements effective July 1, 2011.*

SB 2220 SD1     **Construction Site Inspection Task Force** – Establishes a “construction site inspection task force” to be led by DCCA. The focus of the task is to investigate, advise, and create an enforcement process. Issues to be considered include tax evasion, unlicensed contracting, the use of undocumented workers, workplace safety violations, and improving coordination amongst various agencies. Directs the task force to report its findings and recommendations to the Legislature no later than 60 days before the 2011 regular legislative session. *Effective July 1, 2010.*

~~HB 2899 HD1~~

HB 2877 HD1     **Temporary Suspension; Tax Exemption for Certain Persons and Gross Amounts** – Temporarily suspends the GET tax exemption and imposes a 1% tax in various circumstances. Related to employment, the amount received by hotel operators, operators of orchard properties, management companies from related telecommunications services common carriers, and professional employment organizations (“PEO”) and disbursed for employee compensation and benefits would be subject to this tax. *Effective July 1, 2010 and repealed on June 30, 2015*