

LEGISLATIVE Digest



HAWAII
EMPLOYERS
COUNCIL

JULY 13, 2010

2010 – After Governor’s Vetoes

Employment Practices and Employment Rights

SB 2565 SD1 HD1 CD1
ACT 139 (5/25/10) **Hawaii Civil Rights Commission; Disability Discrimination; Confidential Witness** – Extends the deadline for HCRC to adopt new rules regarding disability discrimination to twelve months after the EEOC publishes their final rules concerning the Americans with Disabilities Act Amendments Act of 2008. Prohibits a complainant and respondent from giving a “confidential witness statement.” *Effective upon approval.*

~~SB 2883 SD1 HD2 CD1~~
VETOED **Sick Leave** – Amends HRS § 378-32 to prohibit discrimination against an employee solely because the employee legitimately used accrued and available negotiated sick leave. Applies only to employers and labor organizations that have a collective bargaining agreement and have 100 or more employees. *Effective July 1, 2010.*

Workers’ Compensation (“WC”)

SB 2050
ACT 018 (4/13/10) **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.*

~~SB 2566 HD2 CD1~~
VETOED **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. Makes clear that the referral to the specialist may be within the medical facility in which the physician or surgeon has a financial interest. *Effective July 1, 2010.*

SB 2597 HD1
ACT 052 (4/23/10) **Hawaii Employers Mutual Insurance Company** – Clarifies that the Hawaii Employers Mutual Insurance Company (“HEMIC”) shall not have any additional third-party duty nor incur any additional liability toward members or beneficiaries beyond that explicitly created by statute. HEMIC will continue to be liable for all common law claims to the same extent as other workers’ compensation insurers. *Effective July 1, 2010.*

Unemployment Insurance

SB 2323 HD2 **Online Registration; Partial Unemployment** – Requires DLIR to accept a claimant’s work availability information online or in paper form. *Effective upon approval.*

ACT 076 (4/20/10)

~~SB 2324 SD2 HD2 CD1~~

VETOED

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. 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.*

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

ACT 002 (3/11/10)

- 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.*

Public Contracts

SB 2840 SD2 HD1

VETO OVERRIDDEN
ACT 068 (4/29/10)

Public Works; Construction; Hawaii Residents Preference – Adds a new chapter to require at least 80% of workers on construction procurement 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 and subcontractor on the contract. 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. *Effective upon approval.*

HB 2897 HD1 SD1

ACT 185 (6/30/10)

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 upon approval and repealed on June 30, 2013.*

Health And Insurance

SB 2885 SD2 HD1 CD1
ACT 158 (6/2/10) **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:

- Director of DLIR
- 2 members of the Hawaii Prepaid Health Care Advisory Council;
- 2 members or employees of the Hawaii Medical Association;
- 2 representatives from the health insurance industry;
- 2 representatives from non-government employee unions;
- 1 representative from Hawaii Credit Union League;
- 1 representative from the Hawaii Bankers Association;
- 2 representatives from other interested organizations or stakeholders, at the discretion of DLIR.

Effective upon approval.

Miscellaneous

SB 1062 SD1 HD1 CD1
(CARRYOVER)
ACT 129 (5/21/10) **Professional Employer Organizations** – Creates a new chapter to:

- Require PEOs to register with DLIR 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 \$250,000;
- Exempt companies only providing temporary help services, independent contractors, and those whose principal business activity is not entering into professional employer arrangements; and
- Require DLIR to adopt rules to implement registration of PEOs.

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

SB 2165 SD1 HD2 CD1
ACT 208 (7/7/10)
WITHOUT SIGNATURE **Guards** – Establishes registration and licensure requirements, including training, instruction, and continuing education for guards and individuals acting in a guard capacity. Legislation applies not only to guards employed by a guard agency, but also to guards employed by a private business entity or a government agency. “Guard” is defined as a “registered uniformed or nonuniformed person responsible for the safekeeping of a client’s properties and persons within contractually prescribed boundaries, and for observation and reporting relative to such safekeeping.”

Prior to acting as a guard, the individual must:

- Register with the board of private detectives and guards;
- Be 18 years old;
- Have a high school degree;

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- Not presently suffer from any psychiatric or psychological disorder which is directly related and detrimental to a person's performance in the profession; and
- Pass a national criminal check and be clear of any convictions of a crime reflecting unfavorably on the fitness of the individual to act as a guard.

The Guard must also undergo the following training:

- 8 hours of classroom instruction before the 1st day of service;
- 4 hours of classroom instruction annually thereafter; and
- 4 hours of supervised on-the-job training.

Directs the board of private detectives and guards to make rules. *New registration and licensure requirements are effective July 1, 2013. Sunsets July 1, 2016.*

SB 2220 SD1 HD2 CD1

ACT 121 (5/19/10)

Construction Site Inspection Task Force – Establishes a “construction site inspection task force” to be convened by the Director of DCCA. Requires the task force to research and report to the Legislator no later than 60 days before the 2011 session on:

- The advantages of inter-agency sharing to combat unlicensed contracting, the use of undocumented workers, workplace safety violations, common case numbers, and a centralized debt collection system;
- Ways to improve the coordination of activities amongst agencies;
- Ways to develop methods to pool, focus, and target the enforcement resources of the agencies;
- Ways to reduce enforcement costs to eliminate duplicative audits and investigations.

Effective July 1, 2010.

~~HB 444 HD1 SD1~~

VETOED

Civil Unions – Extends the same rights, benefits, protections, and responsibilities of spouses in a marriage to partners in a civil union. Only those who are (1) not a partner in another civil union, a spouse in a marriage, or a reciprocal beneficiary; (2) 18 years or older; and (3) not related to each other are eligible to be a partner in a civil union.

Effective January 1, 2010.