

LEGISLATIVE Digest



HAWAII
EMPLOYERS
COUNCIL

APRIL 8, 2010

2010 – After Second Crossover

Employment Practices and Employment Rights

- SB 2565 SD1 HD1 ~~HB 2380~~ **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 ~~HB 2935 HD3 SD1~~ **Sick Leave** – Amends HRS § 378-32 to prohibit discrimination against an employee who uses accrued and available sick leave. Prohibits employers with collective bargaining agreements and who have 100 or more employees from discriminating against an employee solely for legitimately using accrued and available negotiated sick leave. *Effective July 1, 2020.*

Workers’ Compensation (“WC”)

- SB 2050 ~~HB 1857~~ **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 ~~HB 2637 HD1~~ **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, 2020.*
- SB 2597 HD1 **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 ~~HB 2202 HD1~~ **Online Registration; Partial Unemployment** – Requires DLIR to accept a claimant’s work availability information online or in paper form. *Effective upon approval.*

***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.

SB 2324 SD2 HD2 **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. Requires DLIR to study:

~~HB 2257 HD2~~

- How much it would cost to convert to a semi-annual calculation system for UI contribution amounts
- The 1983 report entitled “Study of the Financing of the Unemployment Compensation Fund of the State of Hawaii” and review the recommendations therein.

Effective July 1, 2020.

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 **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. *Effective upon approval.*

~~HB 2736 HD1~~

HB 2897 HD1 SD1 **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 for 3 years.*

Health and Insurance

SB 2885 SD2 HD1 **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
- 2 members of the Hawaii Prepaid Health Care Advisory Council;
- 1 member or employee of the Hawaii Medical Association;
- 2 representatives from the health insurance industry;
- 2 representatives from non-government employee unions;
- 1 representative from the Hawaii Bankers Association;
- 2 representatives from other interested organizations or stakeholders, at the discretion of DLIR.

Effective July 1, 2050.

Miscellaneous

SB 1062 SD1 HD1 **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 \$ (blank amount);
- 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, 2020.

SB 2220 SD1 HD2 **Construction Site Inspection Task Force** – Establishes a “construction site inspection task force” to be led by DCCA. Requires the task force to facilitate sharing of information to combat unlicensed contractor activity, improve coordination of activities among the participating agencies, develop methods to pool the enforcement resources of the participating agencies to deter unlicensed contractor activity, and reduce enforcement costs by eliminating duplicative audits and investigations. Directs the task force to submit an annual report to the Legislature no later than 20 days before the convening of each regular legislative session. *Effective July 1, 2020.*

~~HB 2899 HD1~~

SB 2402 SD1 HD1 **Taxation** – Suspends the tax exemption and imposes a 1% tax on various amounts including but not limited to amounts received and disbursed for employee compensation and benefits by:

- Hotel operators or suboperators
- Operators of orchard properties
- Management companies from related telecommunications services common carriers
- Professional employment organizations