

LEGISLATIVE Digest



HAWAII
EMPLOYERS
COUNCIL

APRIL 18, 2011

2011 – Employment Bills After Second Crossover

Employment Practices and Employment Rights

- SB 229 SD1 HD2 **Domestic Abuse Victim Discrimination** – Adds “domestic abuse victim status” to the list of protected classes in HRS § 378-2 so that employers are prohibited from discriminating against an employee or applicant for employment based upon the employee's or the applicant's domestic abuse victim status. Includes a requirement that an employer must make “reasonable accommodation” for a domestic abuse victim, including such things as increasing security, screening phone calls, or allowing flexible hours, absent “undue hardship.”
- HB 467 HD2 SD1 **Public Employees; Whistleblowers’ Protection** – Creates a new subpart within Chapter 378 to protect public employees from discrimination for reporting or when they are about to report to the public employer or a public body verbally or in writing a violation of law or contract. Makes clear that employees who knowingly make a false report are not protected under the measure. Requires public employers to post conspicuous notices of the whistleblowers’ protection. “Public employers” include not only State, county, and government agencies, but also general contractors and subcontractors with government contracts under section 104, public works.
- SB 1040 SD1 HD2 **OSHA** – Raises the civil penalty amounts and criminal fines by 10% for violations of the Hawaii Occupational Safety and Health Law.
- SB 1076 SD1 HD3 **Sick Leave Discrimination** – Amends HRS § 378-32 to prohibit unionized employers with 100 or more employees from discrimination because the employee uses accrued and available sick leave. Employers may require a doctor’s note after 3 consecutive days of leave.
- SB 1089 SD1 HD2 **Dislocated Workers** – Authorizes the DLIR to exercise enforcement powers against an employer in a covered establishment.
- HB 546 SD1 **Gender Identity Discrimination** – Amends HRS §§ 368, 378 to prohibit discrimination based on “gender identity or expression.”

Unemployment Insurance (“UI”)

- HB 169 HD2 SD2 **Total Unemployment Rate Trigger** – Provides two layers of additional extended unemployment benefits if certain conditions are met. The first layer of extended benefits is an additional 13 weeks of UI when the State’s average total unemployment rate for the most recent 3 months equals or exceeds 6.5% AND Hawaii’s total unemployment rate for the recent 3 months equals or exceeds 110% of such averages for any or all of the corresponding 3 month periods in the preceding 3 years. This automatic extended benefit trigger expires 4 weeks prior to the last week of unemployment for which 100% federal sharing is available. (Currently, the federal government pays 100% of the extended benefits until December 31, 2011).

Legislative Digest

2011 – Employment Bills After Second Crossover

Page 2

The second layer of extended benefits provides 20 weeks of UI benefits when the State is already on the first layer of extended benefits and the State's average total unemployment rate for the most recent 3 months equals or exceeds 8%.

- SB 1088 SD1 HD1 **Partial Unemployment** – Makes partial unemployment, which was statutorily created in 2009 (Act 170) and set to sunset on July 1, 2012, permanent by eliminating the sunset date. Eliminates the 8-week limitation to be “attached to a regular employer” so that if the employee is not being offered work but has a “definite” return to work date, the employee continues to receive partial unemployment without needing to look for work. Provides a 13 factor list of examples of “good cause” for leaving part-time employment, including economic unfeasibility, the part-time job is outside of the individual's customary occupation, a scheduling conflict with other employment, or the employer's failure to provide sufficient advance notice of a scheduling change.
- HB 1076 HD1 SD2 **Administration Expenses** – Appropriates amounts the State received from the 2009 special administrative transfer for payment of UI administration expenses.
- ACT 002 (2/23/11)**
(HB 1077 HD2) **Assessment for Interest on Loan** – Eliminates exemption of the 0.01% of taxable wages payment into the Employment and Training (E&T) Fund for employers with 0% and 5.4% ratings. Provides for payment of interest due on Title XII loans from the E&T Fund. Authorizes DLIR director to increase the amount of E&T assessment in increments of 0.01% retroactive to January 1, 2011. If the federal government waives interest fees, employers will not need to contribute to the E&T Fund in 2012. *Effective upon approval; retroactive to January 1, 2011, repealed on January 1, 2012.*

Workers' Compensation (“WC”)

- HB 519 HD1 SD2 **LLC; LLP, Partnership; Sole Proprietor** – Excludes the following from WC coverage:
- Partner of a partnership;
 - Partner of a limited liability partnership (LLP) if the partner has a 50% interest;
 - Member of a limited liability company (LLC) if the member has a 50% interest; and
 - Sole proprietor

Health and Insurance

- SB 41 SD1 HD1
HB 1134 HD1 SD2 **Prepaid Health Care Act** – Repeals sunset provision of the Prepaid Health Care Act.
- SB 1273 SD1 **Health Insurance; Enforcement of Federal Law** – Authorizes the Insurance Commissioner to enforce applicable federal law regarding insurance, as set forth in the Affordable Care Act. *Effective upon approval.* Enrolled to Governor.
- SB 1274 SD2 HD3 **Health Insurance; External Review** – Updates Hawaii's patients' bill of rights to conform to federal law.

Legislative Digest

2011 – Employment Bills After Second Crossover

Page 3

SB 1348 SD2 HD3 **Hawaii Health Insurance Exchange** – Establishes the “Hawaii health connector,” a non-profit organization that is Hawaii’s health insurance exchange pursuant to the Affordable Care Act. A 15-member board of directors, appointed by the Governor and with the advice and consent of the senate, will govern the Hawaii health connector.

Public Contracts

SB 1221 SD2 HD1 **80% Hawaii Residents** – Permits a contractor to withdraw a bid if the contractor is unable to comply with the 80% requirement. Requires the general and subcontractor for construction procurement contracts to file a certification of compliance with the notice of final completion of the contract (instead of on a monthly basis). Provides that the general contractor shall not be sanctioned for noncompliance by a subcontractor. Deletes references to temporary suspension of work on the project and permanent disqualification of the contractor or subcontractor as sanctions for failure to comply. Clarifies that it is the final payment on the contract that is to be withheld for noncompliance.

HB 1434 HD2 SD1 **Public Works; Wage and Hour Violation** – Clarifies that when determining prevailing wage violations, multiple violations are judged on a single project basis rather than on multiple projects.

Miscellaneous

SB 120 SD1 HD1 **State Funds** – Transfers excess balances of various funds to the general fund including the following employment related funds:

- Employment and training fund
- Special unemployment insurance administration fund

ACT 001 (2/23/11)
(SB 232 SD1 HD1) **Civil Unions** – Extends the same rights, benefits, protections, and responsibilities of spouses in a marriage to partners in a civil union. Eligibility requirements for civil unions:

- Not married or a party in another reciprocal beneficiary relationship or civil union
- 18 years or older
- Relationship with the proposed partner is not: parent and child; grandparent and grandchild; two siblings; aunt/uncle and nephew/niece; and persons who stand in relation to each other as ancestor and descendant of any degree whatsoever.

Effective January 1, 2012.

SB 1107 SD1 HD2
HB 848 HD2 SD1 **Related Entities; GET Exemption** – Exempts from GET amounts received by a related entity (or indirectly related management entity under HB 848) including salaries, wages and employment-related taxes, vacation pay, sick pay, and pensions and insurance paid out to or on behalf of employees of the related company and reimbursed by the related company for those operating expenses.

HB 1009 HD2 SD2 **Hawaii Criminal Justice Data Center; Fingerprint Retention** – Allows the State to retain fingerprints of employment and licensing applicants for whom criminal history record checks are authorized statutorily so that the State can implement a statewide

Legislative Digest

2011 – Employment Bills After Second Crossover

Page 4

"Rapback" program. Will allow employers and agencies to request automatic notification of arrests for persons and entities statutorily authorized to conduct criminal history record checks under HRS § 846-2.7. Requires agencies and entities covered by HRS § 846-2.7(b) to notify applicants and employees subject to a criminal history record check that their fingerprints will be retained by the Hawaii criminal justice data center.

SB 1349 SD1 HD1 **Non-Profit Corp.** – Amends the Hawaii nonprofit corporations act to permit member actions by ballot and electronic voting, use of electronic notice, and conduct of meeting by teleconference. *Effective upon approval.* On April 18, the Senate approved HD1 and it will now be transmitted to the Governor for approval.

HB 678 HD3 SD2 **Personal Information; Unauthorized Disclosure; Remedy** – Requires government agencies that maintain personal information to train personnel to whom disclosures of personal information are made or to whom access to the personal information may be granted. Requires government agencies to submit a written report to the information privacy and security council (in addition to the legislature) within 20 days after discovering the security breach.

Requires businesses that maintain personal information about Hawaii residents (except financial institutions) to implement a comprehensive written information security program to ensure the security of the personal information, protect against any anticipated threats to the security of the information, and protect against unauthorized access to or use of the information that could result in substantial harm. The appropriateness of the program is based on the size, complexity, nature, and scope of business activities. Requires businesses to train staff on the security program.

Mandates the notice of the security breach to include the toll-free contact telephone numbers and addresses for the nationwide consumer reporting agencies (Equifax, Experian, and TransUnion) and information on how to place a fraud alert or security freeze.