

LEGISLATIVE Digest



JULY 15, 2011

2011 – Employment Bills After Veto Deadline

Employment Practices and Employment Rights

- ACT 206** (SB 229) **Domestic or Sexual Violence Victim Discrimination** – Adds “domestic or sexual violence 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. Permits employers to ask for written verification of the protected status and allows for re-verification every 6 months.
- Revises Chapter 378 Part VI (previously known as “Victims Leave”) to require employers to provide “reasonable accommodation” for a domestic abuse victim, including such things as increasing security, screening phone calls, or allowing flexible hours, absent “undue hardship.” Authorizes employees denied reasonable accommodation to sue the employer. *Effective January 1, 2012.*
- ACT 166** (HB 467) **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. Applies the \$500-\$5,000 fine that is already applicable to a “person” in HRS § 378-65 to “public employers.” *Effective upon approval.*
- ACT 123** (SB 1040) **OSHA** – Raises the civil penalty amounts and criminal fines by 10% for violations of the Hawaii Occupational Safety and Health Law. *Effective July 1, 2011.*
- ACT 118** (SB 1076) **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. *Effective July 1, 2011.*
- ACT 137** (SB 1089) **Dislocated Workers** – Requires the DLIR to enforce the written notice requirement of the Dislocated Workers Act that requires employers to provide employees with a 60-day written notice of a closing, divestiture, partial closing, or relocation of a covered establishment. *Effective July 1, 2011.*
- ACT 034** (HB 546) **Gender Identity Discrimination** – Amends HRS §§ 368, 378 to prohibit discrimination based on “gender identity or expression.” Defines “gender identity or expression” as including “a person’s actual or perceived gender, as well as a person’s gender identity, gender-related self-image, gender-related appearance, or gender-related expression, regardless of whether that gender identity, gender-related self-image, gender-related appearance is different from that traditionally associated with the person’s sex at birth.” *Effective upon approval.*

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Unemployment Insurance (“UI”)

- ACT 165** (SB 1088) **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. *Effective July 1, 2011.*
- ACT 120** (HB 1076) **Administration Expenses** – Appropriates amounts that the State received from a 2009 transfer under ARRA (\$2,180,480) for payment of UI administration expenses, in accordance with the ARRA requirements requiring the funds be used for administrative uses only. *Effective upon approval.*
- ACT 002** (HB 1077) **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”)

- ACT 196** (HB 519) **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.
- Effective upon approval.*

Health and Insurance

- ACT 228** (HB 1134) **Prepaid Health Care Act** – Repeals sunset provision of the Prepaid Health Care Act. *Effective upon approval.*
- ACT 015** (SB 1273) **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.*
- ACT 230** (SB 1274) **Health Insurance; External Review** – Updates the Patients’ Bill of Rights and Responsibilities Act by standardizing the external review procedures for health carriers to comply with the Affordable Care Act. *Effective June 30, 2011. However, if the federal government extends the time period for Hawaii’s existing external review process, then the*

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effective date is the sooner of the end date of the transition period or January 1, 2012. If the U.S. Supreme Court finds ACA's external review requirements unconstitutional, the Act shall be repealed.

ACT 205 **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. *Effective July 1, 2011.*
(SB 1348)

Public Contracts

ACT 192 **80% Hawaii Residents** – Permits a contractor to withdraw a bid without penalty before the contract is awarded 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 the following as sanctions for failure to comply: references to temporary suspension of work on the project; permanent disqualification from future projects; and recovery by the State or county of any monies expended on the contract or subcontract. Instead, penalties are listed as withholding final payment to the general contractor and debarment or suspension of the general contractor or subcontractor. *Effective July 1, 2011.*
(SB 1221)

ACT 160 **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. *Effective upon approval.*
(HB 1434)

Miscellaneous

ACT 124 **State Funds** – Transfers excess balances of various funds to the general fund including \$44,000 from the Employment and Training Fund. *Effective July 1, 2011*
(SB 120)

ACT 001 **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.

ACT 037 **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.*
(SB 1349)

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- ACT 091** (HB 1089) **Income Tax; Conformity to the IRC for 2010** – Conforms Hawaii’s income tax law to the Internal Revenue Code amendments made in 2010. With regard to employment laws, the measure makes clear that when an adult child receives health benefits through his/her parent’s employer, the benefits are not considered taxable income to the employee under state law as is provided under federal law. *Effective upon approval.*
- ACT 117** (HB 1009) **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 "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. *Effective July 1, 2011.*
- ACT 146** (HB 141) **Hawaii Penal Code; Labor Trafficking** - Establishes class A and B felonies for labor trafficking offenses, a nonpayment of wages offense, and an unlawful conduct with respect to documents offense. A person, in the capacity as an employer, commits the offense of nonpayment of wages if he or she fails or refuses to pay wages to the employee with the following *mens rea*:
- Intentionally;
 - Knowingly; or
 - Intent to defraud.
- The penalty for nonpayment of wages ranges from \$2,000 to \$10,000 for each offense. Each pay period is considered a separate offense. Nonpayment of wages is a class C felony if the amount owed is \$2,000 or more or if the defendant falsely denies the amount or validity of the wages owed. The offense is a misdemeanor if the amount owed is less than \$2,000.