

LEGISLATIVE Digest



FEBRUARY 6, 2011

2011 – Employment Bills Introduced

Employment Practices and Employment Rights

- SB 91 **Dislocated Workers** – Extends the Dislocated Workers Act notice requirement to employers actively seeking a buyer for a sale, transfer or merger, even before a binding agreement is made, or is engaged in bankruptcy proceedings, even before the bankruptcy proceedings has concluded.
- SB 131 **Abusive Work Environment** – Makes “abusive conduct” an OSHA violation and expressly permits WC coverage for victims. Defines “abusive conduct” as:
- Conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer’s legitimate business interests.
 - Employer subjects the employee to an “abusive work environment” (that is, severe abusive conduct causing physical or psychological harm to employee).
 - Relation because the employee opposed an unlawful safety violation or assisted in an investigation or proceeding related to Abusive Work Environments.
- Permits employees to sue for emotional distress if the employee chooses not to elect WC. Employers would be vicariously liable up to \$25,000 for employee violations and directly liable if the employer directly commits the abusive conduct or has an abusive work environment. Provides affirmative defenses to abusive work environment claims: (1) employer reasonably prevented and prompted corrected the abusive conduct and the employee unreasonably failed to take advantage of the corrective opportunities (defense unavailable if negative employment decision exists); and (2) complaint grounded primarily upon a negative employment decision based on a legitimate business interest; or (3) complaint grounded primarily upon the employer’s reasonable investigation of potentially illegal or unethical activity.
- SB 229 **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. Requires victim to notify the employer of such status.
- HB 134
- SB 622 **Public Employees; Whistleblowers’ Protection** – Creates a new chapter within Chapter 378 to protect public employees from discrimination for reporting or is about to report to the public employer or a public body verbally or in writing a violation of law or condition that may significantly threaten the health or safety of the public or public employees.
- HB 467
- SB 889 **Family Leave; Military Deployment** – Recognizes “qualifying exigencies” as defined by 29 CFR § 825.126 as a permissible reason for Hawaii Family Leave.
- HB 1109

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- SB 960 **Labor Trafficking** – Establishes class A and B felony labor trafficking offenses, a
HB 577 nonpayment of wages offense, and an unlawful conduct with respect to documents offense.
- 1st Degree Labor Trafficking* – knowingly provides, obtains, attempts to provide, or obtains another person for labor by: extortion, kidnapping, unlawful imprisonment, force, threat, or intimidation, deception or fraud (material false statements, misstatements, or omissions), requiring performance of labor to repay a debt, assault, withholding government-issued identification, threatening harm to a person’s family member, or any form of control over the person which would have the reasonably foreseeable effect of causing the person to engage in or to remain engaging in the labor.
- 2nd Degree Labor Trafficking* – knowingly aiding another in a venture to commit 1st degree labor trafficking; or benefiting from the participation in venture knowing or in reckless disregard that another is committing 1st degree labor trafficking
- Nonpayment of Wages* – willfully or with intent to defraud fails or refuses to pay wages to the employee. If amount owed to the employee is \$2,000 or more, the violation is a class C felony. If amount owed is less than \$2,000, it is considered a misdemeanor. Judged on a per pay period basis so that it is a separate offense for each pay period of the violation.
- Unlawful Conduct with Respect to Documents* – knowingly destroying, concealing, removing, confiscating, or possessing a person’s government ID constitutes a class C felony.
- SB 1040 **OSHA** – Raises the civil penalty amounts and criminal fines for violations of the Hawaii
HB 166 HD1 Occupational Safety and Health Law. Amount of increase is currently blank in SB 1040.
However, HB 166 HD1 increases penalties and fines by 10%.
- SB 1076 **Sick Leave Discrimination** – Amends HRS § 378-32 to prohibit discharge, demotion, or
HB 341 HD1 withholding from pay solely because the employee uses accrued and available sick leave.
HB 341 HD1 clarifies that employers have a right to ask employees to verify their sick
leave.
- SB 1089 SD1 **Dislocated Workers** – Authorizes the DLIR to exercise enforcement powers against an
HB 465 HD1 employer in a covered establishment.
- SB 1223 **Contractors; Licenses; Criminal History Record Checks** – Requires applicants and
~~HB 888 (DEFER)~~ holders of a contractor license to be subject to a criminal history record check conducted
by the contractors licensing board pursuant to rules adopted by the board.
- SB 1464 **E-Verify** – **SB 1464 and SB 1552** require all employers to use E-Verify.
SB 1552
~~HB 1485 (DEFER)~~
- HB 214 **Bullying in the Workplace; Crime** – Makes bullying in the workplace a misdemeanor
offense. Bullying is defined as intentionally subjecting an employee or coworker to
“abusive conduct” in the workplace that causes physical or psychological harm. “Abusive
conduct” is malicious conduct that a reasonable person would find offensive and is
unrelated to an employer’s legitimate business interests.

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- HB 546 **Gender Identity Discrimination** – Amends HRS §§ 368, 378 to prohibit discrimination based on “gender identity or expression.”
- HB 884 HD1 **Family Leave; Siblings** – Extends the Hawaii Family Leave Act to cover leave for a serious health condition of a sibling (in addition to child, spouse, reciprocal beneficiary and parent). Siblings are defined as a blood or adopted brother or sister. “Hanai” relatives are not expressly recognized as a sibling.
- HB 1166 HD1 **Successor Employer** – Requires successor employer with 100 or more employees in a divestiture to hire all incumbent nonsupervisory and non-confidential employees. Generally prohibits the successor from requiring employment applications of incumbent employees but allows “pre-hire screening” including criminal history record checks and drug screening. Less than 100% of employees need not be hired if the successor employer is substantially dissimilar to the former employer’s business or less employees are needed. Gives employers a tax credit (amount currently unspecified) to retain the workers for 1 year.

Collective Bargaining

- SB 278 **Unions; Right to Work** – Gives employees a right to work regardless of union membership.
- SB 618 **Union Certification** – Expands card check union certification law to include employees of all covered employers by deleting the \$5,000,000 annual gross revenue threshold.
- HB 385 HD1 **Legislative Employees; Card Check** – Authorizes nonsupervisory legislative employees to unionize through the card check and requires initial bargaining to begin within 10 days of the union’s written request. Conciliation may occur after 90 days of bargaining and if no agreement after 20 days of conciliation, an arbitration panel will decide the dispute with a 2-year binding decision.
- HB 648 **Noise Pollution; Picketing** – Prohibits the use of sound generating devices that can be heard within 100 feet while picketing hotels. Permits such use during the following times:
- Mon.-Sat., 8am-9pm
 - Sun., State/Fed. Holiday – 9am-8pm

Wage and Hour

- SB 610 **Universal Living Wage** – Enacts the universal living wage as the minimum wage if the calculation yields a higher dollar amount per hour than the statutorily specified minimum wage. The calculation is based on a percentage of fair market rent for a 1-bedroom apartment.
- SB 613 **Minimum Wage** – Establishes new minimum wage rate for 2012. Thereafter, on each January 1st, minimum wage adjusts based on the consumer price index for urban wage earners and clerical workers.

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- SB 759 **Minimum Wage; Tip Credit** – Allows employers to increase the tip credit by changing it from a fixed amount (which is currently 25 cents) to a percentage (current proposal is 25%) of hourly tips claimed by the employee as income. However, the hourly wage minus the tip credit cannot be less than \$5 per hour.
- SB 844 **Tip Credit** – Increases tip credit to 50 cents (instead of 25 cents).
- SB 1035 **Payment of Wages; Housekeeping** – Amends Sec. 387-4.5 to read “Provisions of law may not be waived by agreement. No provision of this chapter [may] shall in any way be contravened or set aside by private agreement.”
- SB 1037 **Minimum Wage** – Increases minimum wage to \$8.50/hr. beginning July 1, 2011 through
HB 168 Dec. 31, 2012. Thereafter, sets minimum wage to CPI.
- SB 1202 **Rest/M meal Breaks** – Requires employers of all sizes to provide a 30-minute rest or meal
SB 1405 period after 5 hours of work, unless a CBA expressly provides for meal breaks. Employers
HB 1316 (DEFER) who fail to provide such break would be liable to employees in an amount equivalent to one and one-half hours for each 30-minute meal break the employee was not provided. SB 1405, however, applies only to employers with 50 or more employees and also exempts employers who are the operators of a continuously operating facility that is regulated by an environmental permit, if an on-duty meal period is provided.
- HB 478 **Public Employers; Paycheck Protection** – Amends Section 89-4 to protect public employees from paycheck deductions for contributions to political contributions, except when the employee consents in writing. Revises Section 388-6 to prohibit “other person[s] or entit[ies] responsible for the disbursement of funds in payment of wages and salaries” to “withhold” or “divert” wages unless otherwise permitted in 388-6. Also prohibits withholding, diversions, and deductions for political contributions.
- HB 1391 **Minimum Wage** – Increases minimum wage to \$7.75 per hour beginning on July 1, 2011 and then increasing minimum wage based on the CPI for urban wage earners and clerical workers thereafter.

Unemployment Insurance (“UI”)

- SB 90 **Domestic or Sexual Violence** – Makes fear of domestic or sexual violence a good cause
HB 574 HD1 for not accepting otherwise suitable, available work if the individual reasonably believes
HB 748 that the employment will subject the individual, the individual’s minor child, or other individuals in the workplace to an unreasonable risk of violence. The victim must have sought “appropriate assistance in responding to the domestic or sexual violence” (e.g. police report, help from victim services organization, legal action).
- SB 843 **Taxable Wage Base** – Reduces the taxable wage base for unemployment taxes to wages of no more than \$7,000.
- SB 848 **Family-Owned Corporations** – Provides family-owned corporations with only one stockholder with the option to participate in the State’s UI program.

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- SB 1033 **Retirement Payments; Housekeeping** – Amends Sec. 383-23.5, to read "(c) Subsections (a) and (b) shall only apply to new claims filed with an effective date [prior to] before July 1, 2005."
- SB 1034 **Compelling Family Reason; Housekeeping** – Amends Sec. 383-7.6 to read "(d) "domestic or sexual violence", "stalking", and "victim services organization" [shall have] has the same meaning as in section 378-71."
- ~~SB 1038 (DEFER)~~
HB 169 HD1 **Total Unemployment Rate Trigger** – Creates a new section within the UI law to create a total unemployment rate trigger, a decision that is optional for states. Gives unemployed an extra 13 weeks of extended benefits when the nationwide total unemployment rate for the most recent 3 months equals or exceeds 6.5% for 13 weeks or 8% for 20 weeks AND Hawaii's total unemployment rate equals or exceeds 110% of such averages for either or both of the corresponding 3 month periods in the preceding 2 years. *Effective January 1, 2012.*
- SB 1088 SD1
HB 837 HD1 **Separation from Part-Time Work** – Authorizes an individual that is attached to a regular employer that is not offering work to continue to be eligible to receive UI benefits even if that individual voluntarily or involuntarily separates from part-time employment, with or without good cause from a secondary employer during that week. HB 837 HD1 awards UI compensation in such situations only when the separation from employment is for "good cause" which is recognized as: (1) Loss of full-time work with a regular employer made it economically unfeasible to continue part-time employment; (2) The part-time employment was outside of the individual's customary occupation and would not have been considered suitable work under HAR § 12-5-55 (c) at the time that the individual accepted the part-time employment; (3) The employer failed to provide sufficient advance notice of a work schedule change; (4) There was a work schedule conflict with the regular full-time employer; or (5) Any other factor relevant to a determination of good cause.
- SB 1159
HB 963 **Sole Proprietors** – Excludes sole proprietors, regardless of incorporation, from employment security laws, but allows them to elect to be covered.
- SB 1303
HB 1076 **Administration Expenses** – Appropriates amounts the State received from the 2009 special administrative transfer for payment of UI administration expenses.
- SB 1304
HB 1077 HD1 **Assessment for Interest on Loan** – Provides for payment of interest due on Title XII loans from the Employment and Training (E&T) Fund. Authorizes DLIR director to increase the amount of E&T assessment in increments of .01% retroactive to January 1, 2011. HB 1077 HD1 refunds employers any overpayment of assessments after the State pays off the interest on the federal UI loan. *Effective upon approval; retroactive to January 1, 2011, repealed on January 1, 2012.*
- SB 1475
HB 1530 **Athletic Official Exclusion** – Excludes "athletic contest officials at publicly exhibited contests" from UI coverage. Includes umpires, referees, judges, linespersons, timers, score keepers, or others who receive remuneration solely by way of a game fee.

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- HB 113 HD1*¹ **Work Sharing Program** – Establishes a voluntary work sharing program within DLIR. Allows employers to create a work sharing program in lieu of layoffs. The program must be approved by DLIR and must involve at least 2 employees and 10% of the employer’s permanent workforce in the affected employing unit. The employees’ hours and corresponding wages must be reduced by 10%-50%.
- Approved plans are effective for 1 year. Employees would be eligible for unemployment benefits in an amount equal to the percentage of reduction of the individual’s wages resulting from an approved plan.
- HB 503 **Educational Employees** – Allows educational employees other than those serving in an instructional, research, or principal administrative capacity to collect unemployment insurance benefits for the period between successive academic years or terms.
- HB 812 **UI Compensation; Tax Exemption** – Temporarily exempts from 2011 through 2015 unemployment compensation from the Hawaii income tax. Requires withholding of state and local taxes from UI compensation in other cases (instead of the withholding being voluntary).
- ~~HB 813 (DEFER)~~ **UI Compensation; Tax Exemption** – Temporarily exempts unemployment compensation from the Hawaii income tax for 2011 – 2014. Inapplicable to those taxpayers who receive more than \$28,800 (or whose spouse receives more than \$48,000) in other sources of gross income other than UI compensation.

Workers’ Compensation (“WC”)

- SB 279
HB 463 HD1* **Subspecialty Diagnosis; No Employer Contest** – 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. Employers prohibited from contesting the request for or provision of diagnostic services. Allows for the one-time consultation to be referred to a board certified or licensed specialist working in a facility in which a physician or surgeon may have a financial interest.
- SB 280
HB 464 HD1 **Employer’s Written Report; Compensability Denial** – Requires an employer who denies compensability, or indicates compensability is not accepted, to submit a written report to the director and claimant within 30 days of its denial of, or indication not to accept, compensability that substantiates its denial of compensability. Prohibits extensions of the due date for the employer’s written report.
- SB 845
HB 527 HD1 **Recreational/Social Activities** – Disallows WC benefits for injuries sustained during after-work employer-sponsored voluntary recreational or social activities. HB 845 HD1 makes clear that such denial of coverage for the claim applies regardless of whether it is employer sponsored. Additionally, SB 845 clarifies that calculation for permanent partial disability awards are patterned after those of permanent total disability awards.

¹ “*” indicates that the description does not reflect the most recent draft of the bill since the committee report and the most recent draft (i.e., HD1) had not been released at the time this document was updated on February 6, 2011.

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- SB 847 **Stress Claims** – Removes WC coverage for stress claims, and injuries and damages from any act of violence. Appropriates funds to establish a WC fraud hotline. Requires designation of a deputy attorney general to investigate and prosecute WC fraud violations.
- SB 963 **Motor Vehicle Insurance; Accident and Health or Sickness Insurance** – llows an injured person to submit a claim for injuries suffered at work or in a motor vehicle accident through the injured person's accident and health or sickness insurance contract. Limits the waiting period for the receipt of treatment or medical care or services under WC or for an insured under motor vehicle insurance (time currently unspecified in bill).
- SB 1031 **Disciplinary Action; Housekeeping** – Makes a housekeeping amendment to “Disciplinary Action” definition (“means personnel action by an employer in the form of punishment against an employee for an infraction of employer or contract rules, in the form of a reprimand, suspension, or discharge.”)
- SB 1032 **“Usual and customary employment”; Housekeeping** – Makes a housekeeping amendment to the definition of "usual and customary employment" (means “[the] a line or type of work in the gainful employment market consistent with a claimant's background, training, and experience.”)
- SB 1118 **Medical Exams; Mutual Agreement** – Requires independent medical examinations and
HB 466 permanent impairment rating examinations to be performed by physicians mutually agreed upon by employers and employees or appointed by the director of DLIR.
- SB 1157 **Attorney's Fees** – Authorizes the assessment of reasonable attorney's fees (in addition to
HB 1196 cost of the proceedings) to be levied on a party who brings, prosecutes, or defends a WC claim without reasonable grounds.
- SB 1196 **WC Fraud** – Transfers jurisdiction over WC fraud from the DLIR to the insurance fraud
HB 386 (DEFER) investigations unit of the insurance division of DCCA.
- SB 1414 **Repackaged Drugs and Compound Medications** – Restricts markups of repackaged
HB 1243 HD1* prescription drugs and compound medications to what is currently authorized for retail pharmacies under state law.
- HB 362 **Self-Employed and Families Exemption** – In entities having 10 or fewer employees, excludes self-employed individuals and their families from WC law.
- 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 if the member has a 50% interest; and
 - Sole proprietor

Health and Insurance

- SB 27 **Long Term Care Insurance** – Removes long-term care insurance from the definition of “accident and health or sickness insurance” and related terms within the insurance code; removes reference to insurance fraud statute.

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- SB 36 SD1* **Mental Health and Substance Abuse Parity Working Group** – Convenes a working group to determine how to comply with federal mental health and substance abuse parity laws.
HB 949
- SB 41 **Prepaid Health Care Act** – Repeals sunset provision of the Prepaid Health Care Act.
HB 1134
- SB 122 **Naturopathic Physician** – Requires insurance coverage for services provided by a licensed naturopathic physician.
HB 1145
- SB 270 **Medical Tort Reform** – Requires arbitration in medical services contracts. Limits attorney’s contingency fees to 40% of the first \$50,000; 33 1/3% of the next \$50,000; 25% of the next \$500,000; and 15% for recovery above \$600,000. Allows for periodic payments for future damages for awards \$50,000 or more. Limits the amount recoverable for noneconomic damages to \$250,000.
- SB 592 **Medical Torts; Medical Claim Conciliation Panel** – Authorizes the court, in medical tort litigation, to impose sanctions on a non-prevailing party whose rejection of the medical claim conciliation panel’s decision resulted in the subsequent litigation. Potential sanctions include attorney’s fees, reasonable costs and fees (expert fees, travel costs, and deposition costs), and juror service fees.
HB 111
- SB 594 SD1* **Hawaii Health Authority** – Establishes a 9-member Hawaii Health Authority within the governor’s office to develop a comprehensive plan for recommendations to implement the Affordable Act, health insurance exchange, patient-centered medical home, increasing number of primary care physicians, and other health related recommendations and initiatives.
HB 272
- SB 678 **Health Insurance; Annual Medical Exam** – Mandates health insurance coverage for a school-required annual medical examination, including the administration of any required immunizations.
- SB 679 **Health Insurance; Physical Therapy** – Requires health insurance policies and related products to cover physical therapy prescribed by a board-certified surgeon for chronic pain.
- SB 730 **Bundling; Health Insurance; Sunset Clause** – Removes the sunset clause provisions section 5 of Act 227, Session Laws of Hawaii 2008, in order to continue permitting bundling of insurance (health, dental and vision) for small accident and health insurances (i.e., those with less than 5% market share).
HB 613
- SB 786 **Prepaid Health Care Advisory Council** – Allows representatives of health care provider organizations to serve on the prepaid health advisory council. Increases the number of members on the council from seven to nine.
~~HB 407 (DEFER)~~
- SB 857 **Medical Savings Accounts** – Establishes medical savings accounts, allowing employees to contribute pretax dollars into the account and for employers to deduct their contributions from their state taxable income.
- SB 861 **Prepaid Health Care** – Repeals Prepaid Health Care Act in its entirety.

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- SB 941
HB 512 HD1* **Palliative Care; Health Insurance Required Coverage** – Requires policies of accident and health or sickness insurance to provide coverage for palliative care. Defines palliative care as care provided at any time after the diagnosis of a chronic or serious medical condition for the treatment or management of systems, such as pain, difficulty breathing, fatigue, nausea, muscle weakness, motor impairment, difficulty sleeping, mental or emotional distress, or other system, that interfere with an individual’s ability to engage in daily life activities.
- SB 979 SD1 **Wellness** – Appropriates money for the Healthy Families Initiative Pilot Program
- SB 1106 **Wellness Programs** – Creates a workplace wellness pilot program
- SB 1138 **Health Care Administrative Uniformity; Anti-Trust Exemption** – Protects collaborative discussions and potential agreements between health care providers, insurers, or other interested entities on uniform administrative standards regarding evidence-based medicine, clinical efficacy, and better quality procedures for health claims processing from unfair competition and anti-trust laws.
- SB 1176 **Lifebed Intelligent Medical Vigilance System; Mandatory Insurance Coverage** – Mandates health insurance coverage for use of the Lifebed Intelligent Medical Vigilance System by all health and accident insurers, mutual benefit societies, and health maintenance organizations after 12/31/11.
- SB 1273
HB 1046 **Health Insurance; Enforcement of Federal Law** – Authorizes the Insurance Commissioner to enforce applicable federal law regarding accident and health or sickness insurance.
- SB 1274
~~HB 1047 (DEFER)~~ **Health Insurance; External Review** – Provides uniform standards for external review procedures based on NAIC Uniform Health Carrier External Review Model Act, in order to comply with the requirements of the federal Patient Protection and Affordable Care Act of 2010.
- SB 1275
~~HB 1048 (DEFER)~~ **Health Insurance Exchange** – Enables the establishment of a health insurance exchange in response to the Affordable Care Act.
- SB 1348 **Hawaii Health Insurance Exchange** – Establishes the Hawaii health “connector” to create a health insurance exchange pursuant to the Affordable Care Act. Creates Hawaii health insurance exchange council and task force to recommend policies and procedures to implement the governance of the health insurance exchange.
- SB 1381 **Hawaii Health Authority** – Extends by one year the deadline for the Hawaii health authority to submit to the legislature a comprehensive health plan for all individuals in the State
- SB 1420
HB 1446 **RN Staffing Plan** – No later than September 1, 2011, requires each acute care hospital and critical access hospital to establish a nurse staffing committee to develop a documented nurse staffing plan.
- SB 1438
HB 414 **Dental Services** – Prohibits dental service organizations, mutual benefit societies, and health maintenance organizations from requiring a dentist who provides services to its subscribers to accept a fee set by the plan for any services except covered services.

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- SB 1452 **Health Insurance; Smoking Cessation** – Beginning March 1, 2012, health insurance
HB 1443 HD1* policy information must include information about the risk of smoking and courage
quitting smoking. Requires individual and group hospital and medical service contracts to
provide coverage that requires minimal or no co-payments for smoking cessation (e.g.,
counseling, prescription coverage for nicotine replacement products).
- SB 1468 **Hawaii Patient Centered Health Home Pilot Program; Hawaii Medicaid
Modernization and Innovation Council** – Establishes the Hawaii patient centered health
home pilot program. Establishes the Hawaii Medicaid modernization and innovation
council to design and implement the program. Council ceases to exist on 6/30/13.
- HB 405 **Direct Payment; Nonparticipating Providers** – Requires insurers, mutual benefit
societies, and health maintenance organizations to pay health care providers directly
regardless of the health care provider's participatory status with the insurer, mutual benefit
society, or health maintenance organization. Also requires nonparticipating providers who
provide emergency services to be paid promptly and directly for the treatment rendered.
- HB 413 **Dental Services; Contracts** – Prohibits an accident and health or sickness insurer, mutual
benefit society, health maintenance organization, or dental service organization from
requiring a dentist who provides services to its subscribers to accept a fee set by the
accident and health or sickness insurer, mutual benefit society, health maintenance
organization, or dental service organization unless the services are covered under the
applicable subscriber agreement.
- HB 414 **Dental Services** – Prohibits dental service organizations, mutual benefit societies, and
health maintenance organizations from requiring a dentist who provides services to its
subscribers to accept a fee set by the plan for any services except covered services.
- HB 473 **Medical Malpractice; Insurance; Non-Economic Damages** – Limits non-economic
damages in medical tort actions to \$500,000. Also apportions the amount of economic
damages allocated to a healthcare provider.
- HB 482 **Health Insurance; Rate Regulation** – Requires a 30-day public review and comment
HB 1500 period and public hearing upon the filing with the insurance commissioner of a request for
a rate change by a managed care plan (HB 482) or by an accident and health or sickness
insurer, a mutual benefit society, or a health maintenance organization (HB 1500).
- HB 600 **Brain Injury; Mandated Coverage** – Requires insurers, hospital and medical services
plans, and health maintenance organizations to provide coverage for survivors of brain
injuries, including cognitive and neurocognitive therapy, neurobehavioral and
neuropsychological testing or treatment, and necessary post-acute transition services or
community reintegration activities.
- HB 634 **Medical Liability; Noneconomic Damages; Malpractice Insurance** – Generally limits
noneconomic damages in medical tort actions to \$250,000, with a limit of \$3,000,000 in
actions involving catastrophic damages. Requires insurers to reduce medical malpractice
insurance premiums.
- HB 821 HD1* **Mandatory Health Coverage; Autism Spectrum Disorders** – Requires health insurers,
mutual benefit societies, and health maintenance organizations to provide health care
coverage and benefits for autism spectrum disorders beginning after December 31, 2011.

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- HB 930 **Medical Torts; Noneconomic Damages; Pilot Project** – Limits noneconomic damages in medical torts to \$250,000, except upon a finding of gross negligence. Requires DOH to evaluate the effectiveness of noneconomic damages limits and report to the legislature. Sunsets on 06/30/18.
- HB 1201 HD1* **Hawaii Health Benefit Exchange** – Establishes the Hawaii Health Benefit Exchange in response to the Affordable Care Act. The exchange will be governed by a 7-member board of directors. Establishes a 5-member health benefit exchange oversight council under DCCA to oversee the exchange and to ensure it fulfills its purpose.
- HB 1507 **Health Insurance Premium Tax** – Imposes the 4.265% insurance premium tax on mutual benefit societies and health maintenance organizations from July 1, 2011-June 30, 2013, but exempts them from the tax if they do not file for an insurance plan rate increase from January 1, 2011 – June 30, 2013.
- HB 1538 **Medical Tort Reform** – Establishes the Medical Claims Conciliation Office to issue administrative decisions on medical tort claims. Permits parties to appeal the hearing officer’s decision and request a trial de novo. Requires the non-prevailing party must pay reasonable costs and fees, jury costs, and attorney’s fees.
- Public Contracts**
- SB 1221 **80% Hawaii Residents** – Requires the general and subcontractor for construction
HB 787 procurement contracts to file 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.
- SB 1225 **Public Contracts; Bids** – Requires certain lowest bidders (those whose bid is 10% lower than the next lowest bid or 10% under the amount projected by the government contracting agency) on public works construction contracts to provide the governmental contracting agencies with a projected breakdown of the hours of employees on the contract.
- SB 1226 **Prevailing Wages** – Requires 1/10 of 1% of the total amount of public works contracts to
HB 887 (DEFER) be transferred into the prevailing wage enforcement special fund to be used by DLIR for the purposes of enforcing state prevailing wage laws.

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- SB 1436 **Living Wage; Unionization** – Requires a living wage based on the poverty threshold for a family of four. Requires every contract and bid to contain the following provisions:
- ~~HB 1317 (DEFER)~~
- Assure the right of all employees to form, join, or assist labor organizations, to bargain collectively through representative of their own choosing, and to exercise these legal rights without interference
 - If at any time during the contract period, a labor organization or any employee seeks to organize, that contractor shall commit no act or make any statement that will directly or indirectly state or imply the contractor’s preference or non-preference for unionization;
 - If at any time during the contract period a labor organization or employee seeks to organize, that contractor will grant access to its employees by any labor organization in employee lunchrooms, lounges, or other non-public areas on the contractor’s premises during employees’ off work periods for organizational purposes;
 - If a bona fide labor organization requests recognition within an appropriate bargaining unit, a disinterested, neutral party selected by the Director of DLIR will review the authorization cards. If a majority of employees designated the union to represent them, the contractor must recognize the union.
- HB 20 **Apprenticeship preference** – Repeals Act 17 (2009), which gave give a 5% bid reduction for those with registered apprenticeship programs.
- HB 21 **Residency Preference** – Repeals Act 68 (2010), which imposed the 80% residency requirement for procurement contracts.
- HB 78 **Local Firm Preference** – For state/county construction projects in a county with population of less than \$250,000, construction businesses headquartered in that county is preferred.
- HB 342 **Procurement; Disclosure Requirements** – Requires the state procurement office to submit annual reports regarding: (1) contracts for consulting services entered into by state agencies; and (2) active procurement contracts of more than \$50,000. Requires all contractors and subcontractors that provide consulting services pursuant to a state contract must submit an annual employment report for each contract: (1) number of employees employed to provide services under the contract; and (2) the number of hours the employees work and the employees’ total compensation under the contract.
- HB 558 **Prevailing Wage** – Amends HRS § 103-55 to require employee wages/salaries be not less than the wages paid to public officers and employees for similar work in the *State*.
- HB 628 **Wages and Hours; Public Works** – Amends HRS § 104-2 to authorize employers on public works to establish four-day work weeks of 10 hours a day without being required to pay overtime for the ninth and tenth hours of a ten-hour workday.
- HB 831 **Contractor; Work In Lieu of Taxes** – Permits contractor to pay GET by negotiating for, working on, and completing construction/renovation projects for the State.
- HB 1434 **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.

Tax Credit

- SB 180 **Telecommute; Income Tax Credit** – Provides an income tax credit for 2011 and 2012 for employers when their employees telecommute for work. Amount of tax credit based on whether employer is in an attainment or nonattainment area and how many days the employee telecommutes:
- *Nonattainment area; Employee telecommutes 12 days/mo.* - tax credit is 100% of telecommuting expenses.
 - *Attainment area; Employee telecommutes 12 days/mo.* - tax credit is 75% of telecommuting expenses.
 - *Employee telecommutes at least 5 but less than 12 days/mo.* – tax credit is 25% of telecommuting expenses.
- A one-time 100% tax credit is also available for costs relating to telecommuting assessment, with a maximum of \$20,000. Maximum total aggregate tax credits for each year is \$2 million. For expenses relating to begin telecommuting but not otherwise subject to the tax credit, the employer can claim up to \$1,200 per participating employee each calendar year. The telecommuting agreement supporting the tax credit must be signed on or after July 1, 2010.
- HB 120 **Telecommuting; Tax Credits** – Provides an income tax credit of an unspecified amount to employers who allow their employees to telecommute (i.e., working from home for at least 75% of the employee’s duties).
- SB 753 **High Technology; R&D Income Tax Credit** – Establishes a tax credit for 10% of
HB 1511 “qualified labor costs” (wages for the first 12 months of employment of any FT employee or PT employee who is a full time student). The employee must also be a Hawaii resident. Extends the tax credit for qualified research activities for five years.
- SB 800 **Tax Credit; Wellness Plan** – Creates a tax credit for certain employers who offer their
HB 409 HD1 employees a “qualified wellness program.” Tax credit is equal to 10% of the costs of the wellness program.
- SB 1137 **Tax Credit; Prepaid Health Advisory Council** – Provides a 10% tax credit for employers who provide wellness programs. Allows representatives of health care provider organizations to serve on the prepaid health advisory council.
- HB 179 **Senior Citizens Hires; Tax Credit** – Provides income tax credit (50% of qualified wages for first 6 months) for taxpayer who hires a person 65 years of age or older.
- HB 801 HD1* **Work Opportunity Tax Credit** – Makes the work opportunity income tax credit operative for the taxable years beginning after 12/31/2010 and ending on 12/31/2013. The credit is 40% of the qualified first year wages.

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HB 810 HD1 **Tax Credit; Employment Increase** – Provides a tax credit for increases in the total number of covered employees and total wages paid to covered employees by a taxpayer in 2011 and 2012. Number of covered employees must increase by 10% and total wages paid to covered employees must increase by 10% over the preceding year. “Covered employees” does not include owners, officers, directors, shareholders, partners, members, and member managers. The credit is 10% of the increase difference between the wages of 2011 or 2012, as applicable, as compared to the previous year. Maximum tax credit is \$50,000. Inapplicable to businesses that did not have employees in 2010.

Miscellaneous

SB 56 **Liquor Commission** – Requires alcohol server employees to complete a mandatory training program within 30 days of employment. Training includes instruction in: recognizing alcohol intoxication; dealing with intoxicated customers; liability of liquor establishment for serving intoxicated customers; and statutory prohibitions regarding intoxicated liquor in HRS § 281-78.
HB 942

SB 120 **Special Funds** – repeals special funds and transfers balance into general fund on July 1, 2011. Affected employment-related funds include:

- Center of Labor Education and Research at UH, West Oahu, HRS § 304A-2267
- Disability and Communication Access Board, HRS § 348F-7
- Unemployment Compensation Fund, HRS § 383-121
- Special UI administration fund, HRS § 383-127
- Employment and training fund, HRS § 383-128

SB 125 **Developmental Disability; Job Training** – Establishes an employment training and placement program for persons with intellectual and developmental disabilities to help such persons find and keep employment. Although those between 16 years old and 65 years old are targeted, priority is given to 16-22 year olds. Program is run by Dept. of Human Services and funded with \$1.5M (or as much as necessary) in state general funds and Medicaid waiver money.

SB 231 **Civil Unions** – Extends the same rights, benefits, protections, and responsibilities of spouses in a marriage to partners in a civil union.
SB 232 SD1
HB 1623

SB 728 **Identity Theft; Cause of Action** – Provides a private cause of action for a victim who, as a result of an information security breach, suffers a risk of harm from identity theft. Sets a minimum penalty of \$___ or 3-fold damages sustained by the plaintiff. Requires that when personal information is disclosed, notice to the victim must include the distribution medium and method of the security breach, the duration it was exposed, types of fraudulent activities that could result, any remedial actions the individual can take, a statement of the individual’s legal rights pursuant to the breach, and the legal responsibilities of the business or government.
HB 1220
HB 1337

SB 849 **GET; Intermediary Business Transactions** - Repeals the GET on all intermediary business transactions.

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- SB 850 **GET; Charitable Organizations** – Exempts charitable organizations' fundraising
SB 853 activities from GET.
- SB 851 **GET; Tax Holiday** – Establishes a general excise tax holiday on four days per year for
consumers and businesses for retail goods and services sold on condition that businesses
pass the savings on to consumers.
- SB 863 **Marriage** – Amends the state constitution to repeal the requirement that the legislature
define marriage, and instead reserves marriage to opposite-sex couples.
- SB 1107 **Common Paymaster for Related Persons; GET Exemption** – Exempts from the GET
HB 848 the amounts received by a common paymaster to pay the remuneration for related persons
to the common paymaster.
- SB 1120 **Workforce Development; STEM Initiatives** – Continues support of science, technology,
engineering, and math (STEM) fields and creative media learning initiatives, in part by
appropriating an unspecified amount of funds out of the general revenue through the end of
FY 2013 for the business/education internship and mentorship program.
- SB 1162 **Information Privacy and Security Council** – Requires government agencies to develop
HB 1549 mandatory training programs for agency personnel to whom disclosures of personal
information are made or to whom access to the personal information may be granted. In
the event of a government security breach, requires the government agency to be
responsible for the cost of credit report or credit monitoring services any individual
affected by the breach for 2 years following the discovery of the security breach. Requires
reports of security breaches to be submitted to the information privacy and security
council.
- SB 1236 **Hawaii Criminal Justice Data Center; Fingerprint Retention** – Allows the State to
HB 1009 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.
- SB 1349 **Non-Profit Corp.** – Amends the Hawaii nonprofit corporations act to permit member
HB 878 actions by ballot and electronic voting, use of electronic notice, and conduct of meeting by
teleconference.
- SB 1486 **Workforce Development; UH; Community Colleges** – Enhances the workforce
development capacity of Hawaii's community colleges by establishing a skilled worker and
business development center to provide workforce training to meet the rapidly evolving
needs of both employers and employees.

- SB 1532 **Income Tax; General Excise Tax; Credits; Exemptions** – Repeals income, general excise, and other certain tax credits and exclusions, with certain exemptions, including:
- Section 235-7 (e.g., pension compensation for past services, and contributions by an employer to a prepaid legal services plan for compensation)
 - Section 235-9.5 (stock options from qualified high technology businesses)
 - Section 373K-2 (amounts received by PEOs from clients for employee wages, salaries, payroll taxes, insurance premiums, and benefits such as retirement, sick leave, health benefits)
 - Section 237-16.8 (convention, conference and trade show fees for nonprofit organizations)
 - Section 237-23.5 (common paymaster)
 - Section 237-24.7 (amounts received by hotel operators from the hotel owner or time share association; amounts received by the suboperator of a hotel from the hotel owner, time share association or hotel operator for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick pay, and health benefits)
- HB 14 **Traffic Abstract** – Prohibiting disclosure (except to law enforcement) for traffic infractions of more than ___ years. Provision inapplicable to criminal convictions and CDLs licensees.
- HB 22 **Daylight Savings Time** – Recognizes daylight savings time, which advances clock by 1 hour on second Sunday of March to the first Sunday of November. See 15 USC § 260a(a).
- HB 82 **Training for State Managers/Supervisors** – Requires the Director of Human Resources Development to establish a training program for all state managerial and supervisory employees to manage others, including interpersonal skills to encourage a positive work environment. Funded by general funds.
- HB 433 **Life Insurance** – Prohibits employers from taking a life insurance policy on any employee or group of employees where the employer has not given notice or obtained written consent of the employee insured.
- HB 759 **Developmental Disability; Job Training** – Establishes an employment and training program under the department of human services for intellectually and developmentally disabled persons using Medicaid waiver funds. Persons targeted will be between 16 and 65 years old.
- HB 163 **Marriage; Reciprocal Beneficiaries; Rights and Benefits** – Allows reciprocal beneficiaries to jointly file state income tax returns. Allows reciprocal beneficiaries to live in the same community care foster family home. Defines marriage as only between one man and one woman.
- HB 164 **Constitution; Permits Same-Sex Marriage** – Amends Art. 1, Sec. 23 of the State Constitution to redefine “marriage” as “a legally sanctioned union between two people of the opposite or same sex.”

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- HB 165 **Constitution; Prohibits Same-Sex Marriage** – Prohibits same sex marriage by amending Art. 1, Sec. 23 of the State Constitution to eliminate the legislature’s authority to reserve marriage to opposite sex couples and to define “marriage” as “a legally sanctioned union only between a man and a woman.”
- HB 274 **Intellectual Disabilities** – Changes references in the Hawaii Revised Statutes by substituting "intellectual disabilities" wherever the term "mental retardation" appears.
- HB 363 **Construction Site Task Force** – Continues the work of the construction site task force for one year; requires final report to the Legislature no later than 60 days before the 2012 session.
- HB 472 **SEE Hawaii Work Program** – Authorizes the Dept. of Human Services to operate the Support Employment Empowerment (SEE) Hawaii Work Program, which helps transition welfare recipients to the workforce. Requires reimbursement to employers:
- Min. wage + \$.50 for each additional full \$1 per hour paid over the minimum wage for up to 40 hrs/wk
 - 14% of subsidized wages to cover training and other employment related expenses
- Permits reimbursement to employers up to \$200 per month. Limits wage reimbursement to no more than 12 months.
- HB 557 **Construction Site Inspection Task Force** – Establishes a construction site inspection task force to be led by DCCA to investigate and inspect construction sites for unlicensed contractors.
- HB 626 **Uniform Collaborative Law Act** – Enacts Uniform Collaborative Law Act, which authorizes disputants to enter into collaborative law participation agreements signifying interest to resolve the dispute without intervention of a tribunal (court or other third party decision maker). Requires parties to a collaborative law process to disclose information fully, candidly, and informally without formal discovery. Subject to certain exceptions, disqualifies attorneys in the collaborative process (and their law firms) from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter.
- HB 678 HD1 **Personal Information; Unauthorized Disclosure; Remedy** – Requires a government agency responsible for the inadvertent, unauthorized disclosure of personal information to pay for the person's access to credit reports for at least three years. Within 7 days of providing notice of the security breach, the business/government must give the victim a choice of credit agencies to choose from.
- HB 741 **Reciprocal Beneficiaries Certificate; Agent to Grant** – Authorizes persons authorized to grant marriage licenses to grant certificates of reciprocal beneficiary status to qualified persons.
- HB 799 **Temporary Suspension of General Excise and Use Tax Exemptions** – Suspends temporarily the exemptions for certain persons and certain amounts of gross income or proceeds from the general excise and use tax and requires the payment of the tax at a 1% rate. Includes “value or gross income received by nonprofit organizations from certain conventions, conferences, trade shows, or display spaces” from the tax exemption suspension. Effective 07/01/11 and sunsets on 06/30/15.

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- HB 806 **Trade Or Business Expense Deduction; Modification** – Temporarily modifies the trade or business expense deduction under the income tax as follows: (1) prohibits a deduction for traveling expenses while away from home and out-of-state, and (2) for publicly held corporations establishes a ceiling of \$129,660 for employee remuneration for 2011 and \$143,748 in 2012.
- HB 807 **Income Tax Withholding** – Reduces the maximum income tax withholding from 8% to 5%. Effective from July 1, 2011 and repealed on June 30, 2013.
- HB 825 **Business Outreach Board** – Creates a business outreach board under DBEDT to periodically confer with out-of-state holders or controlling or major interests in companies incorporated within the State on problems and concerns regarding doing business in the State. 14-member Board consists of 10 Governor appointed HI residents, 2 Senators, and 2 Representatives.
- HB 1270 **Tax Credit; Tax Exemptions; Evaluation** – Requires the department of taxation to evaluate certain tax credits and tax exemptions and report to legislature. Provides automatic repeal of the tax credits and tax exemptions (including exemption of certain convention, conference, and trade show fees; common paymaster, etc.).
- HB 1354 **Reciprocal Beneficiaries; Benefits** – Extends certain benefits and obligations currently only applied to married individuals to parties to a reciprocal beneficiary relationship.
- HB 1453 **Civil Unions** – Comprehensive 400-page bill that establishes civil unions and provides to civil union partners the benefits and obligations conferred upon a couple by marriage. Employment related sections:
- **HRS § 377-1 (HI Employee Relations Act)**: Excludes civil union partner from definition of “employee”
 - **HRS § 378-1 (Discriminatory Practices)**: Prohibits employers from discriminating against an individual because of civil union status.
 - **HRS § 383-7 (UI)**: Services performed by a civil union partner is not considered “employment.”
 - **HRS §§ 386-34, 41 (WC)**: Authorizes payment to civil union partner if death benefits, funeral and burial allowance in WC cases are warranted.
 - **HRS 388-7 (Payment of Wages)**: Authorizes last paycheck of deceased employee be given to civil union partner.
 - **HRS § 392-5 (TDI)**: Excludes service performed by a civil union partner from the definition of “employment.”
 - **HRS § 393-5 (Prepaid Health Care Act)**: Excludes service performed by a civil union partner from the definition of “employment.”
 - **HRS § 398-3 (Family Leave)**: Authorizes family leave for the serious health condition of a civil union partner.
- HB 1635 **Out-of-State Marriages** – Recognizes marriages that are legal in other states.