

March 13, 2015

2015 - Employment Bills After First Crossover

Employment Practices and Employment Rights

- HB 496 HD1 **Family Leave Insurance Program; Trust Fund** – Establishes a partial wage replacement for leave trust fund funded by employee wage withholdings. Uses the trust fund to provide eligible employees with partial wage replacement for four weeks of family leave. The trust fund shall consist of employee contributions which shall not exceed 0.5% of the employee's wages per pay period. Employers shall withhold the designated amount from the employee's earned income and make the contribution to the fund. Requires all employees to make contributions, unless exempt by law. Provides employees with up to four weeks of paid family leave, provided that an employee's weekly benefit amount shall not exceed 66 2/3% of the employee's weekly wages, up to the maximum amount allowable under Hawaii workers' compensation law. Expands Hawaii family leave law to allow an employee to take leave upon placement for foster care of a child. Contributions to the fund shall begin on January 1, 2017, and the fund may be used to provide paid family leave beginning July 1, 2017. Allows the department of labor and industrial relations to use up to 10% of the annual receipts of the fund for administrative purposes.
- HB 561 HD1 **Social Media Privacy** – Prohibits employers from requiring or requesting employees and job applicants to (1) disclose login credentials to a personal social media account; (2) access a personal social media account in the presence of the employer; and (3) divulge information from any personal social media account. Provides exceptions for an investigation conducted for the purposes of ensuring compliance with laws or work rules, or of an employee's actions based on receipt of specific information about the unauthorized transfer of an employer's proprietary information, confidential information, or financial data to a personal online account or personal online service. Also provides exceptions for electronic communications devices supplied by the employer or traveling/stored through an employer's network, or for social media accounts maintained for the employer's business purposes. Clarifies that employers still have the authority and obligation to conduct investigations regarding unlawful workplace harassment.
- HB 1090 HD2 **Non-Compete and Non-Solicitation Agreements; Technology Businesses** – Provides limitations on the use of non-compete and non-solicitation agreements. HB 1090 HD2 prohibits non-compete and non-solicitation clauses in employment contracts, but provides exemptions for companies in broadcast and telecommunications industries. SB 1279 HD2 prohibits the use of non-compete and non-solicitation clauses in employment contracts, post-employment contracts and separation agreements if the prohibition extends beyond one year, and also provides places an exemption for companies in the broadcast industry.
- HB 1497 HD1 **Employer Records; Professional Employer Organizations** – Requires employers to make, keep, and preserve records of the name, physical address, North American Industry Classification System code, and number of employees employed by the employer. Requires professional employer organizations to provide the physical address, North American Industry Classification System code,

and number of employees of each client company to the Department of Labor and Industrial Relations.

- SB 129 SD2 **Paid Sick Leave; Service Workers** – Requires employers with 50 or more employees (in any one quarter in the previous year) to provide a “service worker” with one hour of paid sick leave for every 40 hours worked, in one hour increments up to a maximum of 40 hours per calendar year. Defines a “service worker” as a non-exempt employee, including an employee of a food establishment, who is paid on an hourly basis, excluding day or temporary workers. Excludes employees who did not work an average of 10 or more hours per week for the employer in the most recent calendar quarter. Entitles such workers to carry over up to 40 hours of paid sick leave per year, up to an aggregate of 80 hours. Allows an employee to use paid sick leave upon the completion of the 680th hour of employment from January 1, 2016 if hired before January 1, 2016, or upon the completion of the 680th hour of employment from the date of hire if hired after January 1, 2016. Provides that such leave can be used for (1) employee’s own illness, injury or health condition; (2) care for a spouse or child with illness, injury or health condition; (3) or absence due to being a victim of family violence or sexual assault. Requires notice of such leave rights. Provides that employers shall be deemed to be in compliance if they offer any sick leave or other paid leave that provides greater rights than required, or have a sick leave policy approved by the director of the department of labor and industrial relations.
- SB 1012 SD1 **Workplace Harassment and Discrimination; Agency Liability** – Provides that an employer shall not be liable for harassment committed by a supervisor unless the supervisor’s agency status is proven to affect the harassment.
- SB 1213 SD1 **Workplace Temporary Restraining Orders** – Allows an employer to seek a temporary restraining order (“TRO”) and injunction against further harassment of an employee or invitee who may be harassed at the employer’s premises or worksite. Also provides that, to the extent feasible, the employer shall consult the employee or invitee who was the subject of harassment, and that such employee who is unwilling to participate in the process shall not be subject to discipline from the employer. Allows unions that represent employees of the employer to intervene in a TRO proceeding.
- SB 1219 SD2 **Independent Contractor; Definition and Certification** – Clarifies Hawaii’s employment security law for independent contractors. Includes IRS 20-factor test to be used as guidelines for determining whether an individual could be an independent contractor, and uses a preponderance of the evidence standard. Retains the ability of the department of labor and industrial relations to determine if an individual is an independent contractor. Requires the director of labor and industrial relations to report to the legislature prior to the regular session of 2016 regarding guidelines developed by the unemployment insurance coverage committee. Requires an annual report to the legislature regarding covered employment determinations.

Wage and Hour

- HB 854 HD1 **Porterage Service Charges; Hotels** – Requires hotels to distribute porterage service charges to employees in full or disclose to customers that the charges are being used for other purposes. Porterage is defined as the act of moving luggage, bags, or parcels between a guest room and a lobby, front desk or any area with vehicular access at a hotel or condominium-hotel.
- SB 1009 SD1
- SB 1122 **Wage and Hour Law; Exempt Status** – Increases the guaranteed monthly compensation required to exempt an employee from minimum wage, overtime and record keeping requirements under

Hawaii wage and hour law from \$2,000 to an amount equal to the current minimum wage multiplied by 276.

Workers' Compensation

- SB 1174 SD2 **Workers' Compensation; Independent Medical Examination** – Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement, which involves (1) preparing a list of five physicians by alternative selection with the employer making the first choice and then (2) alternatively striking physicians from the list with the employee making the first choice. Any physician selected via this process must conduct the examination within 45 days of receiving notice of the selection or appointment, or as soon as possible. Prohibits independent medical examination from being combined with permanent impairment rating. Provides that an employee who refuses to submit to or unreasonably interferes with the examination shall disqualify the employee from benefits until the refusal or interference ceases. Allows for permanent impairment rating examination when employee has attained medical stability, for which the physician shall be selected via the process noted above.

Health and Insurance

- HB 174 HD2 **Health Insurance; Orthodontic Treatment; Orofacial Anomalies** – Requires health insurance coverage of orthodontic treatment for orofacial anomalies resulting from birth defects or syndromes for policy holders and individuals under 26 years of age. Requires written notice of such coverage to be provided to the policy holder.
- HB 467 HD1 **Pulse Oximetry Screening; Congenital Heart Defects; Birthing Facilities; Newborns** – Requires birthing facilities to perform a pulse oximetry test or other medically accepted screening on newborns to screen for critical congenital heart defects. Requires birthing facilities to report certain critical congenital heart defect screening data to the Department of Health.
- SB 337 SD1
- HB 864 HD2 **In Vitro Fertilization; Infertility** – Provides insurance coverage for in vitro fertilization for women who have been unable to attain a successful pregnancy through other applicable infertility treatments for which coverage is available, unless the individual's physician determines those treatments are likely to be unsuccessful. HB 864 HD2 removes requirement that individual be married and amends definition of "infertility" as a failure to achieve a successful pregnancy after 12 months of appropriate, timed unprotected intercourse or therapeutic donor insemination. SB 768 SD1 also provides such coverage for women who have a history of infertility of at least 12 months, and defines "infertility" as a failure to achieve a successful pregnancy though appropriate, timed unprotected intercourse or therapeutic donor insemination.
- SB 768 SD1
- SB 301 SD2 **Health Plans; Notice of Formularies** – Requires entities that offer or renew health plans on or after January 1, 2017, to make available a complete and updated formulary to enrollees, potential enrollees, and providers.
- SB 722 SD2 **Long Term Care Insurance; Termination or Lapse** – Requires the 30-day termination notices of lapse or termination due to nonpayment of premium for long term care policies to be sent by certified mail or commercial delivery service instead of first-class mail.

- SB 736 SD1 **Health Insurance Reimbursement; Notice** – Requires an entity to send written notice to a health care provider at least 30 calendar days prior to initiating any recoupment or offset demand efforts. Prohibits an entity from initiating any recoupment or offset efforts more than 18 months after an initial claim payment was received by a health care provider, with specific exceptions.
- SB 749 SD1 **Colorectal Cancer Screening and Awareness Pilot Program** – Establishes a two-year Hawaii colorectal cancer screening and awareness pilot program using the Hawaii comprehensive breast and cervical cancer control program as a model. Appropriates funds for the pilot program.
- SB 791 SD1 **Health Insurance; Autism Spectrum Disorders** – Requires health insurers, mutual benefit societies, and health maintenance organizations to provide coverage for autism spectrum disorder treatments to a policyholder and individual 10 years of age and under.
- SB 912 **Long-Term Care; Inflationary Update** – Requires the department of human services to track the annual costs, reimbursements, and shortfalls that long-term care facilities experience due to the current long-term care reimbursement rate, as well as the potential impact of a reimbursement rate increase, and provide a report to the legislature every three years beginning in 2018.
- SB 1095 SD1 **Health Insurance; Rerating, Certificates of Authority, and Emergency Services** – Updates title 24 of the Hawaii Revised Statutes, relating to insurance, by: specifying that rerating of rates approved by the insurance commissioner is prohibited; permitting the suspension, revocation, or denial of a mutual benefit society's certificate of authority under certain conditions; and making other conforming amendments.
- SB 1217 SD1 **Health Insurance; Health Care; Discrimination** – Requires insurers who provide health care coverage to provide coverage for medically necessary health care services covered by a health insurance policy when provided by licensed naturopathic physicians acting within their scope of practice. Specifies that health care services provided by naturopathic physicians may be subject to certain limitations. Specifies that limitations shall not direct treatment in a manner that unfairly discriminates against the practice of naturopathic medicine. Permits insurers to require naturopathic physician services to be provided by a naturopathic physician under contract or covered as consistent with out-of-network provider reimbursement practices.

Healthcare Industry; Licensing

- HB 354 HD2 **Registered Nurses and Licensed Practical Nurses; Continuing Competency** – Requires licensed registered nurses and licensed practical nurses to submit evidence of completed continuing competency requirements prior to the renewal of the license.
- SB 735 SD2

Hawaii Health Connector

- HB 576 HD1 **Patient Protection and Affordable Care Act; Waiver; Appropriation** – Amends scope of work to be performed by the State Innovation Waiver Task Force. Provides resources to develop a waiver from certain provisions of the Patient Protection and Affordable Care Act. Appropriates funds.
- SB 1341 SD1
- HB 727 HD2 **Hawaii Health Connector; Plans** – Amends the definition of "qualified plan" under the Hawaii Health Connector to specify that a plan must be a bronze, silver, gold, or platinum plan for individual plans and a gold or platinum plan for small business health options program plans.

- HB 1467 HD2
SB 1338 SD2 **Hawaii Health Connector; Large Group Coverage; Small Employers; Transitional Renewal Policies Notice** – Enables the Hawaii health connector to offer large group coverage and ends transitional renewal policies effective 1/1/2016. HB 1467 HD2 requires health insurers with greater than 20% share of the State's small group health insurance market to offer gold and platinum level qualified health plans as a condition of participation in the individual market of the Hawaii Health Connector. Amends state small market parameters to comport with federal law. Adds notification requirements. SB 1338 SD2 amends the current definition of “small employer” from one that has up to 50 employees to an unspecified amount, and requires health insurers to provide notice to group health plans offering continuation coverage about options to secure affordable coverage under the connector.
- SB 1028 SD2 **Hawaii Health Connector; Sustainability and Funding** – Aligns state law with certain provisions of the Affordable Care Act by requiring qualified health plans in the connector to contract with federally-qualified health centers and utilize payment methodology as specified in the federal Social Security Act. Retains current financial and service benefits of the Hawaii health connector. Enhances the availability of services through the connector. Authorizes the State of Hawaii to guarantee debentures issued by the connector. Specifies that the Director of Finance, pursuant to an act of the Legislature, may use the emergency and budget reserve fund to guarantee, approve, and oversee the issuance of the debentures by the connector.

Hawaii Health Systems Corporation (“HHSC”)

- HB 847 HD1 **HHSC; Primacy Care Training Program** – Appropriates funds for the interdisciplinary HHSC primary care training program at Hilo Medical Center.
- HB 1075 HD2 **Maui Regional System; Public-Private Collaboration** – Authorizes the Maui Regional System to enter into an agreement with a private entity to transition one or more of its facilities into a new private Hawaii nonprofit corporation.
- HB 1112 HD2 **HHSC; Private Health Care Management System** – Reconsolidates HHSC operational administration and oversight by eliminating regional system boards. Repeals certain limits on operational authority. Amends HHSC supplemental bargaining agreements for HHSC employees.
- SB 1117 SD2 **HHSC; Appropriation** – Makes an emergency appropriation of \$15,000,000 to HHSC.

Medical Marijuana; Decriminalization of Marijuana

- HB 321 HD1 **Medical Marijuana Dispensaries** – Establishes a system of medical marijuana dispensaries and production centers. Prohibits counties from enacting zoning regulations that discriminate against licensed dispensaries and production centers. Clarifies the right of qualifying patients and primary caregivers to transport medical marijuana. Appropriates funds.
- SB 682 SD2 **Transportation of Medical Marijuana** – Allows a qualifying patient, primary caregiver, or an owner or employee of a medical marijuana production center or dispensary to transport medical marijuana in any public place, under certain conditions. Repeals the requirement that a certifying physician be the qualifying patient's primary care physician. Effective 7/1/2050 and contingent upon passage of SB 1302.

- SB 879 SD1 **Marijuana; Civil Penalty** – Establishes a civil violation subject to a fine of \$100 for intentional or knowing possession of one ounce or less of marijuana. Amends the offense of promoting a detrimental drug in the third degree to clarify that the offense applies to the knowing possession of more than one ounce of marijuana.
- SB 1291 SD1 **Medical Marijuana Usage; Protections** – Prohibits discrimination against medical marijuana patients and caregivers by schools, landlords, and courts with regard to medical care or parental rights.

Smoking; Electronic Cigarettes (“E-Cigarettes”); Tobacco Products

- HB 385 HD1 **Sales of Tobacco or E-Cigarettes** – Increases the minimum age in which one can purchase any tobacco product or electronic smoking device from 18 to 21 years of age. Prohibits the sale or furnishing of tobacco, tobacco products, and e-cigarettes to persons under 21 years of age.
- HB 525 HD2 **Smoking; Public Parks** – Prohibits smoking and the use of tobacco products and e-cigarettes within the state park system. Requires posting of signage prohibiting smoking or the use of tobacco products.
- HB 586 HD2 **Tobacco and Electronic Smoking Devices; HHSC** – Prohibits the use of tobacco products and e-cigarettes on premises of the facilities operated by the Hawaii Health Systems Corporation. Requires the corporation to offer tobacco cessation programs to employees. HB 586 HD2 also requires the HHSC to consult with collective bargaining units.
- SB 305 SD1
- HB 940 HD1 **E-Cigarettes** – Amends Chapter 328J of the Hawaii Revised Statutes to prohibit the use of e-cigarettes in places where smoking is prohibited and updates signage requirements. Provides definitions for “electronic smoking devices” and “tobacco product.” Revises definition of “smoking” to include the use of an electronic smoking device.
- SB 757 SD2 **Electronic Smoking Devices** – Prohibits the use of electronic smoking devices where smoking is prohibited, with certain exceptions. Updates signage requirements, with certain exceptions.
- SB 802 SD2 **Smoking Prohibitions; Condominiums and Co-Ops** – Allows condominiums and cooperative housing corporations to adopt rules to prohibit smoking in units, common elements, or limited common elements, including but not limited to electronic smoking devices.
- SB 1030 SD1 **Sale of Tobacco and E-Cigarettes** – Increases the minimum age for persons who may purchase tobacco products or e-cigarettes from eighteen to twenty-one years of age. Amends the definition of “electronic smoking device” as used in section 709-908, Hawaii Revised Statutes. Defines “tobacco products”.
- SB 1220 SD2 **Tobacco Products; Nicotine; Excise Tax** – Expands the definition of “tobacco products” to include any product containing nicotine, but not containing tobacco. Imposes an excise tax equal to eighty per cent of the wholesale price of any tobacco product, other than large cigars, sold by a wholesaler or dealer on and after January 1, 2016, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer. Requires the additional moneys collected under the excise tax to be deposited to the credit of the Hawaii cancer research special fund.

Public Works Contracts

- HB 391 HD1 **Public Works; Overtime Compensation** – Allows overtime compensation on public works projects to exceed time and one-half and specifies that if the Department of Labor and Industrial Relations determines that a prevailing wage is subject to collective bargaining, overtime will be at rates set by the applicable collective bargaining agreement. Specifies that overtime compensation and other premium pay rates are those rates specified in an applicable collective bargaining agreement when the basic hourly rate is established in a collective bargaining agreement.
- HB 952 HD2 **Public Works Law; Complaints** – Ensures confidentiality of a complainant of an investigation of wage and hour violations for public works projects. SB 1121 SD1 also requires laborers and mechanics working on public works to file complaints within three years of the date the payment was due.
- SB 1121 SD1
- HB 1126 HD1 **Procurement Database** – Requires the state procurement office to establish a database of all government procurement contracts, accessible to each governmental entity. Requires state procurement office oversight of procurement information. Appropriates funds to establish the database.
- SB 216 SD2 **Overtime Compensation; Public Works** – For government public works construction contracts greater than \$2,000, provides that overtime compensation be not less than 1-1/2 times the laborer's or mechanic's basic hourly rate of pay plus fringe benefits and that if the department of labor and industrial relations determines that the prevailing wage is determined by a group represented by collective bargaining, then the overtime and any other premium shall be at the same rates set by the collective bargaining agreement. Specifies that the overtime rate be as specified in the collective bargaining agreement when the basic hourly rate is based on a collective bargaining agreement.
- SB 728 SD2 **Government Contracts; Pay Equity and Gender Discrimination** – Requires equal pay for similar work for any employee performing services under certain government contracts. Establishes a requirement for government contractors to report wages paid to employees, by gender. Provides penalties for contractors found to be in violation of these practices, including liquidated damages and suspension from government contract work. Also prohibits contractors on certain government contracts from retaliating against employees who disclose wage information.

Public Employees

- HB 1268 HD2 **Public Employees; Workers' Compensation** – Requires injured public employees who are eligible to take part in an employer's return to work program do so as a prerequisite to vocational rehabilitation benefits.
- SB 139 SD1 **Civil Service Exemptions** – Amends language to require each director of central personnel agency for a jurisdiction to review state civil service positions exempted under section 76-16, Hawaii Revised Statutes, on or after July 1, 2002, and prior to July 1, 2014, to determine whether the positions should continue to be exempt. Until July 1, 2017, removes requirement related to civil service appointment for an employee who occupies an exempt position for at least one year. Requires the director of human resources development to submit a report to the legislature.
- SB 1089 SD1 **Workers' Compensation Benefits; Retirement Service Credits** – Requires an employee receiving workers' compensation benefits to have retirement contributions deducted from those benefits. Establishes deadlines: (1) for public employees who join the employees' retirement system after June

30, 2016, to claim membership service credit for previous service and for military service credit; and (2) for starting payments to acquire membership service credit for previous service, military service, and unpaid leave. Provides for payment for acquisition based on actuarial cost.

SB 1113 SD2 **Public Employees; Healthcare Facilities; Background Checks** – Expands the authority of the department of health to conduct background checks to include criminal history record checks, sex offender registry record checks, adult abuse perpetrator and child abuse and neglect record checks, and certified nurse aide registry record checks for persons seeking employment with the State or its contractors where the work involves direct client care and volunteers, applicants, and operators of healthcare facilities.

Government Agencies

HB 683 HD1 **Hawaii Civil Rights Commission; Investigation, Conciliation and Dismissal of Complaint** – Authorizes the executive director to dismiss a discrimination complaint and issue a notice of right to sue after a determination of a reasonable cause of discrimination is made and conciliation fails. Amends the Executive Director’s authority with respect to fair housing to comply with the federal Fair Housing Act.

HB 696 HD1 **Healthcare Workforce Advisory Board** – Establishes the Hawaii healthcare workforce advisory board to help increase and strengthen the healthcare workforce in the State of Hawaii.

HB 951 HD1 **Labor and Industrial Relations Appeals Board; Notice of Hearing** – Allows the Labor and Industrial Relations Appeals Board the option to provide notice of hearing by online posting on the board’s webpage if service by first class mail fails to elicit a response from the party.
SB 1120

Tax; General Excise Tax (“GET”); Tax Credits

HB 133 HD1 **New Hotel Construction; Tax Credit** – Provides an income tax credit for costs incurred in new hotel construction or renovation.

HB 283 HD1 **GET Exemption; Mixed-Use Projects** – Establishes an exemption from the GET for the development of mixed-use projects incorporating affordable housing units on state or county lands.

HB 966 HD1 **GET; Nonprofit Organizations** – Re-inserts wording from Section 237-23 of the Hawaii Revised Statutes that was previously repealed.

HB 1092 HD1 **Deferred Compensation Benefits; Income Tax Exclusion** – Excludes income received from deferred compensation retirement plans from the state income tax for taxpayers who meet certain income requirements.

HB 1454 HD2 **Manufacturing Tax Credit** – Establishes an income tax credit for taxpayers who incur certain expenses for manufacturing products in Hawaii. Applies to taxable years beginning after December 31, 2015. Sunsets January 1, 2023.

Miscellaneous

HB 553 HD1 **University of Hawaii Graduate Students; Collective Bargaining** – Establishes UH graduate student assistants as collective bargaining unit 15. SB 638 SD1 requires the director of human
SB 638 SD1

resources development to establish a working group to submit recommendations on the rights and privileges of individuals in collective bargaining unit 15 to the legislature.

- HB 770 HD1
SB 1151 SD2 **Liquor Licenses; Off-Premises Consumption** – Authorizes restaurants and retail dealers with a liquor license to sell beer, malt beverages, wine, or cider for off-premises consumption, under certain conditions. Authorizes brewpubs and small craft producer pubs with a liquor license to sell for off-premises consumption malt beverages purchased from another liquor licensee.
- HB 819 HD2 **Bullying in Schools** – Requires certain state entities and grantees that provide services, activities, or privileges to youths to adopt bullying prevention policies. Establishes a task force to assist the Governor with bullying prevention policies in the State. Appropriates funds.
- SB 476 SD1 **Boards and Commissions; Financial Disclosures** – Requires the state ethics commission to provide a confidential copy of board and commission members' most recent financial disclosures to the governor, all other members of the filer's board or commission, and executive director of the applicable agency. Requires the recipients of the disclosures to maintain the confidentiality of the disclosures.
- SB 758 SD2 **Service of Process; Publication** – Specifies that the method of service of process for all civil cases under Chapter 634 of the Hawaii Revised Statutes when personal service is unsuccessful shall include publication in a newspaper of general circulation three times or publication on the website of the department of the attorney general together with publication in a newspaper of general circulation at least once. Defines general circulation.
- SB 1010 SD1 **Unauthorized Practice of Law** – Allows an attorney who is not licensed or authorized to practice law in Hawaii, but is licensed or authorized to practice law in another state, to provide legal services on a temporary basis in this State if the attorney provides services in association with or assists a Hawaii licensed attorney or as in-house counsel to an organization in another jurisdiction or to an affiliated entity or employee of that organization in the State. Requires the clerk of the supreme court to maintain a registry of all attorneys who are not licensed or authorized to practice law in the State, but provide services for a matter that is not being litigated in any court of the State. Makes conforming amendments to attorney licensure requirements.
- SB 1014 SD1 **Houseless Bill of Rights** – Provides certain rights to a person who is houseless including equal access to housing, jobs, and shelters, equal treatment by government agencies, and access to life-sustaining activities and essential services. Provides that individuals who are houseless are guaranteed the right to equal employment opportunity without discrimination due to the lack of a permanent mailing address or the fact that the individual's mailing address is that of a shelter or social service provider.
- SB 1154 **Liquor Commissions; Public Hearings** – For counties with a population of 500,000 or more, requires a public hearing before the liquor commission on an application for a liquor license to be held not less than thirty days after the first public notice for the hearing.