

April 17, 2015

2015 - Employment Bills After Second Crossover

Employment Practices and Employment Rights

- HB 496 SD2 **Family Leave Insurance Program Study; Paid Sick Leave – Part I:** Requires the office of the lieutenant governor and the department of labor and industrial relations to have an actuarial study prepared to determine the estimated liability and cost of implementing a family leave insurance program to be administered by the state that would provide an employee with up to 12 weeks of paid leave under the Hawaii Family Leave Law per calendar year and the impact the family leave insurance program would have on the existing temporary disability insurance (“TDI”) program. The study shall examine (1) the estimated cost of allowing employees to take 12 weeks of leave instead of four weeks of leave; (2) the projected number of employees eligible for the family leave insurance program; (3) projected premium rates for the family leave insurance program; (4) projected fund balances for the family leave insurance trust fund; and (5) projected impact the family leave insurance program would have on the existing TDI program. Provides that the report shall be filed with the legislature no later than 20 days prior to the start of the 2016 regular session. Appropriates funds. **Part II -** Requires employers with ___ or more employees in any one quarter in the previous year to provide hourly or non-exempt employees 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. Exempts individuals who work for less than 20 hours per week, unless the individual works for a food establishment. Entitles employees 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. Provides that employees who did not work an average of 10 or more hours per week for the employer in the most recent calendar quarter may not use sick leave. 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. Exempts 503(c)(3) companies in recreation, child care or education services.
- HB 561 SD1 **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 any accounts or services provided by the employer by virtue of the employee’s employment relationship with the

employer or that the employee uses for business purposes. Permits employers to monitor, review, access or block electronic data stored on an electronic communications device paid for by the employer or traveling through or stored on an employer's network, if performed in compliance with state and federal law. Clarifies that employers still have the authority and obligation to conduct investigations regarding unlawful workplace harassment. Prohibits employers from discharging, disciplining, threatening to discharge or discipline, or retaliating against an employee or applicant for not complying with a request that violates these provisions. Provides for a fine between \$500 and \$5,000 for violations. Also provides for the possibility of injunctive relief against such prohibitions.

- HB 1090 SD2 **Non-Compete and Non-Solicitation Agreements; Technology Businesses** – Prohibits non-compete and non-solicitation clauses in any employment contract, post-employment contract, or separation agreement relating to an employee of a technology businesses and provides that any such clauses would be void. Exempts companies in the broadcast or telecommunications industries.
- HB 1497 SD2 **Employer Records; Professional Employer Organizations** – Requires employers, regardless of whether the employers contract with a professional employer organization, to keep a record of the physical addresses of the employer and the North American Industry Classification System code applicable to the employer. Requires professional employer organizations to provide the physical address, North American Industry Classification System code, and number of covered employees of each client company to the department of labor and industrial relations. Requires client companies of a professional employer organization to report and update their physical address and North American Industry Classification System code.
- SB 1219 HD1 **Unemployment Insurance; Independent Contractor Definition** – Clarifies Hawaii's employment security law for independent contractors. Codifies 20-factor test from Section 12-5-2 of the Hawaii Administrative Rules to be used as guidelines for determining whether an individual could be an independent contractor, and clarifies that the weight or relevance of each factor will vary depending on the occupation and factual context in which the services are performed. 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.
- SB 1291 HD2 **Medical Marijuana Discrimination** – Prohibits discrimination against medical marijuana patients and caregivers by schools, landlords, courts with regard to medical care or parental rights, employers, planned community associations, condominium property regimes, and condominiums. Prohibits employers from disciplining, suspending, discharging, or discriminating against an employee solely because the employee tested positive for the presence of marijuana if the employee strictly complied with the requirements for the medical use of marijuana. Clarifies that employees may not use medical marijuana in the workplace; that nothing in this new law shall be construed to supersede any statute, rule, employment contract, collective bargaining agreement or workplace regulation or policy prohibiting an employee from being under the influence of marijuana while in the workplace of the employee's employment; and that nothing in this new law shall be construed to affect the rights of a person who is a qualified medical marijuana patients to request a reasonable accommodation if the person tests positive for marijuana use, provided that reasonable accommodation does not include intoxication or marijuana use at work.

Wage and Hour

- SB 1009 HD1 **Service Charges; Porterage Charges; Hotels** – Expands to hotels (in addition to restaurants) the requirement that a service charge for the sale of food or beverage service must be distributed directly to the employees in full as tip income or disclosure must be made to the purchaser of the services that the service charge is being used to pay for costs or expenses other than wages and tips of employees. Also expands this requirement to the costs of porterage services charged by a hotel. 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 1122 HD1 **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 HD2 **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, which shall be conducted within 45 days of appointment. Provides that the cover letter to the physician shall state that the physician has been mutually selected by the parties and shall be transmitted to the claimant at least five working days prior to the appointment. Provides that if the parties are unable to reach mutual agreement on the selection of a physician to conduct an independent medical examination or permanent impairment rating examination, the selection may be submitted to the insurance commissioner, arbitration, or circuit court. Prohibits independent medical examination from being combined with permanent impairment rating. Also prohibits more than one independent medical examination and one permanent impairment rating examination per case, unless valid reason exists with regard to the medical progress of the employee's medical treatment or when major surgery or elective surgery is contemplated. Limits the costs of such examination to the complex consultation charges governed by the workers' compensation medical fee schedule. 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 SD1 **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 SD1 **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 736 HD2 **Health Insurance Reimbursement; Notice** – Requires at least 30 days written notice prior to recoupment or offset demand efforts for health insurance payments to health care providers. Prohibits recoupment or offset efforts more than 18 months after an initial claim payment was received, with specific exceptions.
- SB 768 HD1 **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. 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, provided that infertility shall not include voluntary sterilization or natural menopause.
- SB 791 HD2 **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 __ years of age and under. Exempts disability, accident-only, medicare, medicare supplement, student accident and health or sickness insurance, dental-only, and vision-only policies or policies or renewals of six months or less.
- SB 912 HD1 **Long-Term Care; Inflationary Update** – Provides for an annual inflationary adjustment to long-term care facility prospective reimbursement rates for care provided to Medicaid recipients.
- SB 1095 HD1 **Health Insurance; Rerating, Certificates of Authority, and Emergency Services** – Defines the term "habilitative services" to mean health care services, including but not limited to physical and occupational therapy, speech-language therapy, speech and swallowing therapy, applied behavior analysis, medical equipment, orthotics, and prosthetics, that help a person keep, learn, or improve skills and functioning for daily living.

Hawaii Health Connector

- HB 576 SD1 **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.
- HB 1467 SD1 **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 SD1 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 1338 HD1 ends authorization to renew or issue transitional lease policies and requires notice to group health plans offering COBRA coverage about options for affordable coverage under the Connector.
- SB 1028 HD1 **Hawaii Health Connector; Sustainability and Funding** – Implements federal requirements for provider network adequacy through requiring insurer contracts with federally-qualified health centers. Authorizes generation of revenue through provision of benefits administration services.

Hawaii Health Systems Corporation (“HHSC”)

- HB 1075 SD2 **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 SD2 **HHSC; Audit; Collective Bargaining; Transition** – Repeals certain limits on operational authority. Requires the auditor to conduct a financial and management audit of HHSC every five years. Authorizes HHSC to negotiate master collective bargaining agreements for its employees. Authorizes a regional system of the Hawaii health systems corporation, in collaboration with a private entity, to transition any one or more of its facilities to management and operation by a new nonprofit management entity. Appropriates an unspecified amount to the department of budget and finance for an unspecified number of positions to coordinate the review of documents and examine the fiscal implications posed by a transition of any Hawaii health systems corporation facility to management and operation by a nonprofit management entity.
- SB 1117 HD1 **HHSC; Appropriation** – Makes an emergency appropriation to HHSC. Amount of appropriation is currently unspecified.

Medical Marijuana

- HB 321 SD2 **Medical Marijuana Dispensaries; Transportation of Medical Marijuana; Certification; Taxes** – Establishes a new chapter for medical marijuana dispensaries and limits on amounts that can be purchased. Prohibits counties from enacting zoning regulations that prohibit the use of land for licensed dispensaries. Clarifies the right of qualifying patients and primary caregivers to transport medical marijuana. Establishes various criminal offenses to protect against unauthorized access to dispensary premises, distribution of marijuana to minors, diversion of marijuana, and alteration or falsification of dispensary records. Repeals the requirement that a certifying physician be the qualifying patient's primary care physician. Requires a certifying physician to have a bona fide physician-patient relationships with a qualifying patient. Establishes a special general excise tax and a retail marijuana special sales tax. Appropriates funds. Contains sunset clause with unspecified date.
- SB 682 HD1 **Medical Marijuana Dispensaries; Transportation of Medical Marijuana; Certification** – Establishes a system of medical marijuana dispensaries and production centers. Requires that the number of licensed dispensaries and production centers increase gradually over an initial phase-in period. Prohibits counties from enacting zoning regulations that discriminate against licensed dispensaries and production centers. 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. Replaces the requirement that a certifying physician be the qualifying patient's primary care physician with a requirement that the physician have a bona fide physician-patient relationship with the qualifying patient. Prohibits primary caregivers from cultivating medical marijuana after 6/30/2018, subject to certain exceptions. Appropriates funds.

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

- HB 525 SD2 **Smoking; Public Parks** – Prohibits smoking and the use of tobacco products and e-cigarettes within the state park system. Allows department of land and natural resources to designate areas that are

not subject to smoking ban at state parks. Requires posting of signage prohibiting smoking or the use of tobacco products.

- HB 586 SD1 **Tobacco and Electronic Smoking Devices; HHSC** – Prohibits the use of tobacco products and e-cigarettes on premises of the facilities operated by HHSC. Requires HHSC to consult with the exclusive representatives of the public sector collective bargaining units.
- 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 1030 HD2 **Sale of Tobacco and E-Cigarettes** – Increases the minimum age for sale, possession, consumption, or purchase of tobacco products or electronic smoking devices from eighteen to twenty-one. Defines “tobacco products” to include electronic smoking devices.

Public Works Contracts

- HB 391SD1 **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 defined by 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 by a collective bargaining agreement.
- HB 952 SD1 **Public Works Projects; Confidentiality of Complaints** – Ensures confidentiality of a complainant in an investigation of wage and hour violations for public works projects. Provides three year time limit to file claim for overtime wages and limits investigation to three year period preceding the filing of a written claim.

Public Employees

- HB 1268 SD2 **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 HD1 **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. Amends the positions that are exempt from civil service. Requires the Director of Human Resources Development to submit a report to the legislature.
- SB 1089 HD1 **Workers’ Compensation Benefits; Retirement Service Credits** – Requires an employee receiving workers' compensation benefits to have retirement contributions deducted from those benefits. Establishes prospectively applicable, 1-year deadlines for claims for service credits and for commencement of payments. Provides for payment for acquisition based on actuarial cost.
- SB 1113 HD1 **Public Employees; Healthcare Facilities; Background Checks** – Expands the scope of background checks conducted by the department of health on operators, employees, applicants, and volunteers in health care facilities and other persons providing health care on behalf of the department

of health 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.

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 SD1 **Healthcare Workforce Advisory Board** – Establishes the Hawaii healthcare workforce advisory board to help increase and strengthen the healthcare workforce in the State of Hawaii. Allows the director of labor and industrial relations to establish workforce advisory boards to be placed in the department for administrative purposes only. The board may consist of partners, stakeholders, educators, practitioners, and employers in important or emerging businesses or industries that have been identified in the state.
- 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.

General Excise Tax (“GET”); Income Tax Exclusion

- HB 966 HD1 **GET Exemption; Nonprofit Organizations** – Re-inserts the words “as such” into Section 237-23 of the Hawaii Revised Statutes that were previously repealed. The use of the words “as such” require that GET exemptions are available only for activities that are undertaken in pursuit of a non-profit organization’s exempt purpose, whether it be for fraternal, religious, charitable, scientific, educational, communal, or social welfare activities, or to the activities of hospitals, infirmaries, sanitarium, and potable water companies, as such, and not for the primary purpose of generating income. Applies retroactively to taxable years beginning after December 31, 2011.
- 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.

Miscellaneous

- HB 553 SD2 **University of Hawaii Graduate Students; Collective Bargaining** – Establishes UH graduate student assistants as collective bargaining unit 15, effective 12/31/2016. Excludes graduate student assistants who work less than 20 hours per week. Requires the chief negotiator for the State to establish a working group to submit recommendations on the rights and privileges of individuals in collective bargaining unit 15 to the legislature prior to the 2016 regular session.
- HB 770 SD1 **Liquor Licenses; Off-Premises Consumption** – Authorizes restaurants with a liquor license to sell beer, malt beverages, or cider for off-premises consumption, under certain conditions. Authorizes retail dealers with a liquor license to sell beer, malt beverages, or cider in non-original packages,

under certain conditions. Authorizes brewpubs and small craft producer pubs with a liquor license to sell malt beverages manufactured on the premises or purchased from another liquor licensee for off-premises consumption.

HB 819 SD2 **Bullying in Schools** – Requires state and county agencies and grantees that serve youth to adopt bullying prevention policies. Establishes a task force to assist the Governor with bullying prevention policies in the State. Appropriates funds.

Resolutions

HCR 168 HD2 **Workers’ Compensation; Working Group** – Requests the department of labor and industrial relations to convene a working group to streamline the state’s workers’ compensation process, in part by converting the filing process to a computerized system. The director or deputy director of the department of labor and industrial relations would serve as chair, and the following would be invited to serve as members: director human resources development; workers’ compensation insurers; workers’ compensation attorneys; a representative of a mutual benefit society operating in the state; a representative of a health maintenance organization operating in the state; health care providers; and any other person deemed appropriate by the chair of the working group. The Senate President and House Speaker shall also appoint one person to serve as a member of the working group. A report is to be submitted to the legislature no later than 20 days prior to the 2017 legislative session.

SCR 88 SD1 **Office of Information Management and Technology; Personal Information; Data Breach; Working Group** – Requests the information privacy and security council, in cooperation with the state chief information officer council, to assess existing procedures of notification following the breach of personal information. Requests that a report be submitted to the legislature no later than 20 days prior to the 2016 legislative session and include (1) notification procedures currently followed when contacting and notifying an individual about the breach of personal information, particularly when stored online; (2) software or other programs generally used to improve protection of personal information; and (3) recommendations of amended or new methods to more securely and promptly provide notification.