



May 6, 2016

2016 - Employment Bills After Sine Die

Employment Practices and Employment Rights

HB 1739 CD1 **Social Media Privacy** – Prohibits employers from requiring, requesting, or coercing an employee or potential employee to:

- Disclose the login credentials for a personal social media account; or
- Access the individual's social media account in the presence of the employer.

Also prohibits an employer from coercing or compelling an employee or potential employee to add any individual, including the employer, to their list of contacts associated with a personal social media account.

Clarifies that an employer is not prevented from:

- Accessing information that is publicly available;
- Complying with applicable laws, rules or regulations;
- Requiring an employee to provide login credentials for an employer-issued device or account or service provided by the employer;
- Conducting an investigation or requiring an employee to cooperate in an investigation if the employer has specific information about an unauthorized transfer to the employer's proprietary information, confidential information, or financial data, to an employee's personal account; or
- Prohibiting an employee or potential employee from using a personal social media account during employment hours, while on employer time, or for business purposes, or
- Requesting or requiring an employee to share content regarding a personal account necessary to ensure compliance with applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct.

Prohibits employers who inadvertently receive login credentials through a network security mechanism from sharing that information with anyone who would access the social media account or using such information to access an account. Clarifies that employers still have the authority and obligation to investigate complaints of workplace harassment. Provides for a fine between \$25-100 for a violation of this proposed law. *Effective upon approval.*

HB 2722 CD1 **Additional Unemployment Insurance ("UI") Benefits; Maui County** – Creates a temporary program for Maui county that provides 13 weeks of additional UI benefits to individuals for whom:

- The benefit year for the most recent claim for UI benefits began on or after March 1, 2015;
- There were at least two quarters of insured employment in Maui county during the first four of the last five completed quarters preceding a benefit year that began on or after March 1, 2015;
- Regular benefits were exhausted;

- A claim for continued benefits is filed;
- The week of unemployment falls within eligibility period;
- Unemployment benefits are not available under any other law; and
- All other conditions of eligibility to regular benefits have been met.

Requires unemployed individuals to enroll in an approved training or retraining course to be eligible for the additional benefits and limits such benefits to counties with a population under 200,000. *Effective July 1, 2016.*

SB 2289 CD1 **NAICS Records** – Requires employers to keep a record of the former physical addresses and current physical address of the employer and the North American Industry Classification System code applicable to the employer. Both versions also specify that professional employer organizations or third-party administrators must maintain such records. *Effective upon approval.*

Workers’ Compensation; Temporary Disability Insurance

HB 2017 CD1 **Workers’ Compensation Treatment Plans; Submissions** – Allows physicians to submit workers’ compensation treatment plans to employers by mail or facsimile. Beginning January 1, 2021, requires employers to accept submission of treatment plans by mail, facsimile or secure electronic means. Provides that the plan shall be deemed *received* when the plan is sent by mail or facsimile, with reasonable evidence showing the treatment plan was received. Provides that a treatment plan shall be deemed *accepted* by the employer unless the employer submits an objection, any applicable documentary evidence supporting the denial, and a copy of the denied treatment plan, with a copy going to the physician and injured employee. Allows an employer to object to an accepted treatment plan upon receipt of new documentary evidence that is contrary to the accepted treatment plan. *Effective upon approval.*

HB 2363 CD1 **Temporary Disability Insurance (“TDI”) Exclusions; Electronic Reports; TDI and Workers’ Compensation Penalties** – Several revisions to TDI and Workers’ Compensation law, including:

- Prohibits employers from providing TDI coverage for themselves if they perform services for (1) a corporation where they have at least a 50% ownership, (2) an LLC where they have at least a 50% distributional interest, (3) a partnership of which they are a partner, (4) an LLP where they have at least a 50% transferable interest, or (5) their own sole proprietorship.
- Allows the Director of Labor and Industrial Relations to receive electronic reports of injuries and other workers’ compensation required reports.
- Increases the penalty for failure to provide workers’ compensation coverage or temporary disability insurance to either (1) \$500 or (2) \$100 per day per employee, whichever is greater.
- Also increases the penalties for failure to make correct or timely benefit payments, for terminating such benefits, for failure to file medical reports, for employer’s failure to provide copies of requested medical reports, and for the deduction of premium payment from employee wages.

Effective July 1, 2016.

HB 2715 CD1 **Workers’ Compensation Study; Closed Claims** – Requires the State Auditor, with consultation from two legislative members to be selected by leaders of the House and Senate, to contract with an actuarial firm that has experience conducting workers’ compensation closed claims studies to

perform a study of closed claims in the State’s workers’ compensation system. Appropriates funds and requires reimbursement. *Effective July 1, 2016.*

Health and Insurance

- HB 1897 CD1 **STD Screening; Insurance** – Requires all health insurers in the state to provide insurance coverage for sexually transmitted disease screenings, including screenings for human immunodeficiency virus and acquired immunodeficiency syndrome. *Effective July 1, 2016, and applies to policies, contracts and plans issued or renewed after January 1, 2018.*
- HB 2084 SD1 **Health Insurance Discrimination; Gender Identity** – Prohibits all insurers in the state, including health insurers, mutual benefit societies, health maintenance organization, and health plans under Hawaii Revised Statutes (“HRS”) Chapter 87A from discriminating with respect to participation and coverage under a policy, contract, plan, or agreement against any person on the basis of actual gender identity or perceived gender identity. *Effective upon approval, and applies to policies, contracts, plans, or agreements issued or renewed in the State on or after January 1, 2017.*
- SB 2319 CD1 **Contraceptives; Insurance** – Requires health insurers to cover contraceptive supplies intended to last for up to a twelve-month period for an insured. *Effective July 1, 2016, and applies to all policies, contracts, plans, or agreements issued or renewed in the State on or after January 1, 2017; provided that plans under Medicaid managed care programs shall take effect upon approval of the Hawaii Medicaid state plan by the Centers for Medicare and Medicaid Services.*
- SB 2395 CD1 **Telehealth; Insurance; Medicaid** – Requires the State's Medicaid managed care and fee-for-service programs to cover services provided through telehealth. Specifies that any telehealth services provided shall be consistent with all federal and state privacy, security, and confidentiality laws. Specifies medical professional liability insurance policy requirements with regard to telehealth coverage. Clarifies that reimbursement for services provided through telehealth shall be equivalent to reimbursement for the same services provided via face-to-face contact between a health care provider and a patient. Requires written disclosure of coverages and benefits associated with telehealth services. Requires that telehealth encompasses store and forward technologies, remote monitoring, live consultation, and mobile health. Ensures telehealth is covered when originating in a patient's home and other non-medical environments. Clarifies requirements for physicians and out-of-state physicians to establish a physician-patient relationship via telehealth. Requires that reimbursement requirements for telehealth services apply to all health benefits plans under HRS Chapter 87A. *Effective January 1, 2017.*
- HB 1943 CD1 **Long-term Care Facilities; Inflationary Adjustment; Appropriation** – Provides an inflationary adjustment to the methodology used to reimburse facilities for the long-term care of Medicaid recipients for fiscal year 2016-17. Appropriates funds. *Effective July 1, 2016 with a repeal date of June 30, 2017.*
- SB 2672 CD1 **Advance Practice Registered Nurses** – Amends various statutes to clarify the role of advanced practice registered nurses with regards to their authority and participation in the health care system. Amends definitions in the statutes to conform with the duties and responsibilities of advanced practice registered nurses. *Effective upon approval.*

Hawaii Health Connector; Affordable Care Act (“ACA”) Waiver

ACT 44
(4/29/16)
SB 2383 HD2 **Hawaii Health Connector; Repeal** – Repeals the Hawaii Health Connector (Connector) as part of the transition to a federally supported, state-based exchange. Specifies that any debts and liabilities of the Connector remain that of the Connector and do not constitute the debts and liabilities of the State. Specifies that the provisions in the measure shall not diminish or limit the consumer protections contained in or alter the provisions of the Hawaii Prepaid Health Care Act. *Effective upon approval.*

ACT 13
(4/25/16)
SB 2775 **ACA; Waiver by State** – Authorizes the state to submit a state innovation waiver proposal to the U.S. Secretaries of Health and Human Services to waive certain provisions of the ACA and implement the waiver upon approval by the Secretaries. *Effective upon approval.*

Public Works Contracts

SB 2723 CD1 **Public Works; Penalties** – Requires government contractors who violate wages and hours laws to pay the following penalties:

- First offense: 25% of the amount of back wages due or \$250 per offense, up to \$2,500, whichever is greater;
- Second offense within two years: the amount of back wages found due or \$500 for each offense, up to \$5,000, whichever is greater; and
- Third offense within three years of a second offense: Double the amount of back wages due or \$1,000 for each offense, up to \$10,000, whichever is greater and suspension from any public works project for three years.

Effective July 1, 2016.

Public Employees

HB 2353 CD1 **Civil Service Exemptions** – Makes various positions within the state energy office exempt from civil service. For a period of three years, authorizes the Department of Health (“DOH”) to establish 18 exempt forensic psychologist positions and 2 exempt Hawaii state hospital primary care physician positions. For a period of three years, provides a civil service exemption for various positions in the Department of Human Services, Department of Public Safety, and the DOH. *Effective July 1, 2016.*

Government Agencies

HB 2009 CD1 **Hoisting Machine Operators** – Authorizes the Hoisting Machine Operators Advisory Board (Board) to employ a 0.5 FTE office assistant instead of an executive director. Allows the Hoisting Machine Operators' Certification Revolving Fund to be used for consultants as necessary, instead of for the executive director. Repeals the position of the executive director for the Board. Requires the Board to submit a comprehensive report to the legislature no later than twenty days prior to the convening of the regular session of 2017. *Effective upon approval.*

SB 2896 CD1 **Hawaii Labor Relations Board (“HLRB”); Service of Process** – Allows the HLRB the option of serving complaints via first class mail or by electronic means through a company designated by the HLRB or to direct the complainants to do so. Allows the HLRB to send notices of hearings by

electronic means *in addition to* first class mail, by a company designated by the HLRB at least 15 days before the scheduled date of the hearing. *Effective upon approval.*

Miscellaneous

- HB 1044 SD1 **Sexual Assault; Supervisors** – Amends the offense of sexual assault in the second degree to include a person who knowingly subjects to sexual penetration with a minor at least sixteen years of age and the person is contemporaneously acting in a professional capacity to instruct, advise, or supervise the minor, with certain exceptions. Amends the offense of sexual assault in the fourth degree to include a person who engages in or causes sexual contact with a minor at least sixteen years of age and the person is contemporaneously acting in a professional capacity to instruct, advise, or supervise the minor, with certain exceptions. *Effective July 1, 2016.*
- HB 1756 CD1 **Nursing; Criminal History Checks** – Requires the submittal of electronic fingerprints for the purpose of criminal history record checks from: nurse licensure applicants beginning with the July 1, 2017, licensing biennium; and nurse licensure renewal applicants beginning with the July 1, 2019, licensing biennium. Authorizes the board of nursing to conduct investigations of applicants for licensure, renewal, and reactivation; request criminal history records of qualified applicants beginning on July 1, 2017; and request criminal history records, no later than July 1, 2023, of persons who were issued licenses prior to July 1, 2017. *Effective July 1, 2016.*
- HB 2561 CD1 **Felony and Misdemeanor Theft; Increased Thresholds** – Sections 37 and 38 of the bill raise the threshold for felony theft in the second degree for the theft of property or services which exceeds \$750 (up from \$300) and misdemeanor theft in the third degree for theft of property or services which exceeds \$250 (up from \$100). *Sections 37 and 38 effective July 1, 2016.*
- HB 2605 CD1 **Dislocated Workers on Maui; Job training and Support Services** – Appropriates funds to establish, administer, and support on-the-job training for individuals who are dislocated from employment in the county of Maui. *Effective July 1, 2016.*
- ACT 24 (4/16/16)**
SB 2256 SD1 **Driver’s License; Korean Conflict Veterans** – Authorizes issuance of driver's licenses with the notation of "veteran" for persons who are veterans of the Korean conflict and persons who served in the armed forces of the Republic of Korea, who fought under the command of the United Nations led by the United States, during the Korean conflict and are currently United States citizens. *Effective upon approval.*
- ACT 46 (5/3/16)**
SB 2315 HD2 **Relating to Jury Duty; Breastfeeding** – Permits an individual to claim an exemption from jury duty if the person is a woman who is breastfeeding a child or expressing breast milk for a period of two years from the birth of the child. *Effective March 1, 2017.*
- SB 2680 CD1 **Financial Institutions** – Clarifies HRS Chapter 412 relating to fees for financial institutions by clearing up inconsistencies. Repeals the credit union advisory board. *Effective upon approval.*

Resolutions

- SR 57 SD1 **Paid Family Leave Task Force** – Requests the convening of a paid family leave task force to examine the benefits and costs of a potential paid family leave program in Hawaii. Duties of the task force to include:

- Examine private sector and state paid family leave programs that offer paid family and medical leave through an extension of TDI;
- Examine private sector and state paid family and medical leave programs in states that have enacted but do not use TDI as a foundation for the program;
- Gather information on the costs of establishing a state paid family and medical leave program in Hawaii;
- Work with an economic analysis firm or program to develop an actuarial for the benefits offered by a state paid family and medical leave program; and
- Review previous legislative task force reports on caregiving and paid leave.