

April 15, 2016

2016 - Employment Bills After Second Crossover

Employment Practices and Employment Rights

HB 1683 SD1 **Family Leave; Siblings** – Expands Hawaii Family Leave Law (“HFLL”) to permit an employee to take leave to care for a sibling. Defines “sibling” as one of two or more individuals having at least one biological or adoptive parent in common.

HB 1739 SD1 **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 access to 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 an employee to share specific content regarding a personal account to ensure compliance with applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct.

Prohibits employers who inadvertently receive login credentials from sharing that information with anyone who would access the social media account or using such information to access an account, and also requires deletion of such information as soon as reasonably practicable. Clarifies that employers are still required to investigate complaints of workplace harassment. Provides for a fine between \$25-100 for a violation of this proposed law.

- HB 2722 SD1 **Unemployment Insurance Benefits; Additional Benefits** – Creates a temporary program providing 13 weeks of additional benefits to unemployed workers when:
- Regular benefits are exhausted;
 - Individual files claim for continued benefits;
 - Week of unemployment falls within eligibility period;
 - Individual cannot receive unemployment benefits under any other law; and
 - Individual has met all other conditions of eligibility to regular benefits.

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.

- SB 2289 HD1 **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.

Workers’ Compensation; Temporary Disability Insurance

- HB 2017 SD2 **Workers’ Compensation Treatment Plans; Submissions** – Allows physicians to submit workers’ compensation treatment plans to employers by mail or facsimile. Beginning January 2, 2021, requires employers to accept submission of treatment plans by mail or facsimile. Provides that the plan shall be deemed *received* when the plan is sent, 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 within 10 business days after receipt of the plan. Allows an employer to object to an accepted treatment plan upon receipt of new documentary evidence that is contrary to the accepted treatment plan.

- HB 2363 SD1 **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 their own corporation, LLC, LLP, partnership, or 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.

- HB 2715 SD1 **Workers’ Compensation Study; Closed Claims** – Requires the Department of Labor and Industrial Relations (“DLIR”) 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.

Health and Insurance; Prescription Drugs

- HB 1897 SD1 **STD Screening; Health 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. 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.
- HB 2539 SD2 **High Deductible Health Plans; Health Savings Accounts** – Authorizes insurers, mutual benefit societies, and health maintenance organizations to offer, sell, or renew, on or after January 1, 2017, a high deductible health plan in conjunction with a health savings account to an employer subject to the prepaid health care act together with a prepaid health care plan insurance policy, which is not a high deductible health plan, that has been sold to the employer. Specifies limitations for high deductible health plans and health savings accounts.
- HB 2740 SD2 **Health Insurance; Preauthorization** – Establishes preauthorization standards for all health insurers in the State, including health benefits plans under HRS Chapter 87A. Requires preauthorization requests for medical treatment or service to be consistent with known, published, and current evidence-based appropriate-use criteria or guidelines for the appropriate specialty or subspecialty for which the preauthorization is requested. Specifies requirements for insurers that require preauthorization. Specifies that preauthorization is not required for delivery of emergency medical services. Requires decisions on preauthorization requests to be made in accordance with nationally-accepted evidence-based appropriate-use criteria or guidelines and made available to health care providers within a health insurer's network. Requires that licensed health care providers be defended and indemnified by an insurer for civil liability for injury to a patient that was caused by the insurer's undue delay in preauthorization. Establishes that an insurer that fails to meet the standards is civilly liable for any injury that occurs to a patient due to undue delay in receipt of medical treatment or services. Specifies that an insurer is not prohibited from implementing preauthorization or otherwise meeting established requirements for preauthorization, as required under existing state or federal programs. Requires the insurance commissioner to submit a report to the legislature. Sunsets July 1, 2019.
- SB 2181 HD2 **Terminally Ill Patients; Investigational Drugs** – Permits manufacturers of investigational drugs or biological products to make available such drugs or products to terminally ill patients under certain conditions beginning on January 1, 2017.
- SB 2319 HD3 **Contraceptives** – Requires insurers to cover contraceptive supplies dispensed in an amount sufficient to cover a twelve-month period.
- SB 2395 HD2 **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 Hawaii Revised Statutes (“HRS”) Chapter 87A.

- HB 1943 SD1 **Long-term Care Facilities; Cost Increase; Inflationary Adjustment** – Provides an inflationary adjustment to the methodology used to reimburse facilities for the long-term care of Medicaid recipients for fiscal year 2016-17.
- SB 2667 HD3 **Medicaid; Health Insurance; Payment** – Requires health insurers to promptly pay clean claims for services and repeals the exemption of Medicaid claims from the clean claims definition.
- SB 2668 HD2 **Out-of-Network Providers; Surprise Bills; Dispute Resolution** – Establishes a working group to evaluate the issue of balance billing in the State of Hawaii.
- SB 2672 HD1 **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.

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

- 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.
- SB 2894 HD3 **Hawaii Health Insurance Programs; State Health Insurance Exchange; Outreach** – Authorizes the Department of Human Services (“DHS”) to develop and administer outreach as required by the Affordable Care Act. Establishes a state health insurance exchange, the Hawaii Health Insurance Programs, in the DLIR to conform Hawaii law to the Affordable Care Act. Appropriates funds to the DLIR and the DHS. Repeals the Hawaii health insurance exchange programs on January 1, 2018.
- SB 2775 **ACA; Waiver by State** – Authorizes the state to submit and implement a waiver from certain provisions of the ACA.

Public Works Contracts

- HB 2544 SD1 **Procurement Code; Construction; Federal Requirements** – Requires the State Procurement Office, in conjunction with the Department of Accounting and General Services, to conduct an analysis and review of the Hawaii Public Procurement Code, specifically with regard to the awarding of construction contracts. Appropriates an unspecified amount of funds for the analysis and review.
- SB 2723 HD2 **Public Works; Penalties** – Requires government contractors who violate wages and hours laws to pay a penalty that is equal to 10% of the amount of back wages due or \$___ per offense, whichever is greater, for the first offense; a penalty equal of \$___ for the second offense; and a penalty equal to \$___ for the third offense within three years of the second notification of violation.

SB 2724 HD1 **Prevailing Wages** – Specifies that development, construction, renovation, and maintenance on public land or financed based on public land are public works subject to state prevailing wage and hour requirements regardless of the contracting parties or funding source, with limited exemptions for certain housing construction. Appropriates funds for enforcement of wage and hour requirements.

Public Employees

HB 2353 SD2 **Position Exemptions; Permanent Exempt Status** – Restores the second civil service-exempt deputy director position for DHS. 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 DHS, Department of Public Safety, DOH, DLIR, and Department of Business, Economic Development, and Tourism.

Government Agencies

HB 2009 SD1 **DLIR; Hoisting Machine Operators** – Requires the hoisting machine operators advisory board to submit a comprehensive report to the legislature no later than twenty days prior to the convening of the regular session of 2017.

HB 2161 SD2 **DLIR; Workers’ Compensation Hearing Officers** – Appropriates funds for the hiring of ___ specified hearing officer and support staff positions within the DLIR’s disability compensation division and to provide the officers and staff with legal and medical training.

HB 2472 SD2 **Wage Standards Division; Enforcement Personnel** – Appropriates funds for five labor law enforcement specialist positions for the DLIR wage standards division for enforcement of Hawaii labor laws, including wage and hour laws on public works construction projects.

SB 2896 HD2 **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.

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.

HB 1756 SD2 **Nursing; Criminal History Check** – 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.

- HB 2561 HD1 **Felony and Misdemeanor Theft; Increased Thresholds** – Section 37 of the bill raises 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).
- HB 2605 SD2 **Hawaiian Commercial & Sugar Company (“HC&S”); Makena Beach and Golf Resort; Dislocated Workers** – Appropriates funds to establish, administer, and support on-the-job training for individuals who are unemployed and dislocated due to the closure of HC&S and the Makena Beach and Golf Resort on Maui.
- HB 2647 SD2 **Work for a Day Pilot Program** – Establishes a three-year Work for a Day Pilot Program to be administered by the City and County of Honolulu that provides homeless individuals with work opportunities. Appropriates funds. Requires matching funds.
- SB 2104 HD1 **Restitution; Income-Withholding** – Creates standards and procedures for income-withholding for purposes of enforcing restitution orders. Amends the definition of "debt" relating to the recovery of money owed to the State to include court-ordered restitution subject to civil enforcement. Provides priority of income withholding orders. Extends victims' access to adult probation records to include access to payment compliance records. Requires that any bail posted by a defendant be applied toward payment of any court-ordered restitution in the same case. Makes permanent Act 119, SLH 2011, which allows certain adult probation records to be provided to certain case management, assessment, or treatment service providers upon the screening for admission, acceptance, or admittance of the defendant into a treatment program. Extends for an additional two years the increase in percentage deducted from inmates' earnings for restitution payments pursuant to Act 139, SLH 2012. Appropriates funds.
- 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.
- SB 2315 HD2 **Relating to Jury Duty; Breastfeeding** – Exempts from jury duty a woman who is breastfeeding or expressing breast milk for a period of two years from the birth of the child.
- SB 2680 HD1 **Financial Institutions** – Clarifies HRS Chapter 412 relating to fees for financial institutions by clearing up inconsistencies. Repeals the credit union advisory board.

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.