

March 10, 2017

2017 - Employment Bills After First Crossover

Employment Practices and Employee Rights

- HB 4 HD1 **Paid Sick Leave** – Requires employers with __ or more employees to provide paid sick leave to employees who work more than 680 hours in a year under the following conditions:
- Provides for accrual of one hour of sick leave for every 40 hours of work, up to 40 hours per calendar year, unless the employer provides a higher limit. Allows employees to use paid sick leave beginning on the 750th hour following commencement of employment.
 - Permits use of paid sick leave for (1) employee’s mental or physical illness, injury or health condition or medical care; (2) care of a family member with a mental or physical illness, injury or health condition, or medical care; or (3) closure of the employee’s place of business or child’s school by order of a public official due to a public health emergency, or to care for a family member whose presence in community would jeopardize health of others due to a communicable disease.
 - Provides that paid sick leave shall be provided based on a manner deemed suitable by the employer.
 - Requires employees to make a good faith effort to provide notice to employer of need for foreseeable leave.
 - Requires employers to provide written notice to employees of rights to paid sick leave.
 - Implements confidentiality requirements.
 - Exempts employers who: (1) have sick leave plans that provide more sick leave than required by this bill; (2) pay employees __ more than the minimum wage; and (3) employ less than __ employees. Also provides that an employer’s current paid leave policy that meets accrual and use requirements of this proposal need not provide additional sick leave to employees.
- HB 213 HD1 **Family Leave; Sibling; Death of Family Member**– Permits an employee to take family leave in order to care for (1) the employee's sibling with a serious health condition or (2) upon the death of an employee's child, spouse, reciprocal beneficiary, sibling, or parent. Specifies notice and certification requirements.
- HB 347 HD2 **Independent Contractor Definition; Unemployment Insurance** – Requires (rather than allows) the Department of Labor and Industrial Relations (“DLIR”) to use 20 specified factors for the determination of whether an individual is an independent contractor or employee. Aligns 20 specified factors with those currently included in the Hawaii Administrative Rules. Requires DLIR to provide report to Legislature regarding guidelines developed by unemployment insurance coverage committee.

- HB 814 HD2 **Social Media Privacy** – Prohibits employers from requiring or coercing an employee or job applicant to disclose login credentials or content from an online account or to access the account in front of the employer. SB 429 SD2 also prohibits employers from “requesting” such information. Both measures (1) provide exceptions for certain situations, such as ensuring compliance with regulatory laws, investigations of misconduct, and protecting against threats to safety, property or confidential information and (2) contain obligations and restrictions with regards to login information that is obtained by an employer’s lawful monitoring technology.
- HB 1025 HD2 **Income Withholding for Child Support; Employer Violations** – Amends the income withholding requirements to impose a fine not to exceed \$1,000 against any employer who (a) discharges from employment, refuses to employ, or takes disciplinary action against any noncustodial parent subject to income withholding or (b) fails to withhold support from income or pay the amounts to the Child Support Enforcement Agency. HB 1025 HD2 provides that the court *shall* impose a fine and SB 891 SD2 provides that the court *may* impose a fine.
- HB 1114 HD1 **Increased HIOSH Penalties** – Increases fines for Hawaii Occupational and Safety violations pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015, which requires state occupational and safety penalties to be “as effective” as OSHA penalties. Currently has blank (___) amounts for penalties.
- SB 425 SD2 **Paid Sick Leave; Service Workers** – Updates HRS Chapter 388 to require employers with 50 or more employees to provide sick leave to a “service worker” under the following conditions:
- Covers all employees except those who (1) work less than 20 hours or week and do not work in a food establishment or (2) work on a per diem or irregular basis.
 - Provides that employees may not use earned paid sick leave if they did not work an average of 10 or more hours per week for the employer in the most recent complete calendar quarter.
 - Defines a “food establishment” as (1) any place or portion thereof is used for the purpose of storing, preparing, serving, manufacturing, packaging, transporting, or otherwise handling food at the retail or wholesale level; (2) any place used for cleaning food equipment or utensils in support of another food establishment; and (3) any operation where food is served or provided to the public with or without charge.
 - Provides one hour of paid leave for every 40 hours of work, up to at least 40 hours per year.
 - Allows employees to carry over 40 hours of paid sick leave from the current year, and carry over an aggregate of 80 hours per year.
 - Allows workers to use accrued leave for (1) own medical reasons; (2) medical reasons for worker’s child or spouse; or (3) certain reasons related to being a victim of family violence or sexual assault.
 - Provides that an employee need not exhaust family leave benefits under Hawaii Family Leave Law prior to taking victim’s leave.
 - Requires employers to provide written notice to employees of these rights.
 - Authorizes the parties to a collective bargaining to waive these requirements in writing.
- SB 675 SD1 **Employment Actions; Discrimination** – Clarifies that an employer may take employment action without committing a discriminatory practice if the action is (1) unrelated to a discriminatory purpose as codified by HRS Chapter 378 or (2) pursuant to an “employee agreement policy” that is applied in a nondiscriminatory fashion.

Stop-Work Orders

- HB 208 HD2 **Stop-Work Order; Workers' Compensation** – Authorizes the Director of Labor and Industrial Relations or the Director's designee to issue and serve on an employer a stop-work order for failure to post proof of workers' compensation coverage or provide workers' compensation insurance as required by law within three business days of a notice of violation. Stop-work orders would prohibit use of employee labor by the employer. Establishes penalties, enforcement, and protest procedure related to stop-work orders. Also provides that an employer or employer representative who directs employees to work in violation of a stop-work order shall be guilty of a misdemeanor.
- SB 854 SD1 **Stop-Work Order; Payment of Wages** – Authorizes the Director of Labor and Industrial Relations or the Director's designee to issue a stop-work order to an employer, until the employer complies with HRS Chapter 388 relating to the payment of wages and other compensation. Provides that a notice of stop-work order shall be final unless the employer files a written notice of appeal within 20 days. Provides for a \$1,000 penalty for each violation of a stop-work order.

Workers' Compensation ("WC"); Temporary Disability Insurance

- HB 377 HD1 **County Building Permits; WC Coverage** – Requires building permit applicants and their subcontractors to have and verify workers' compensation coverage or an exemption from coverage. Requires coordinated communication between county building permitting agencies and the Director of Labor and Industrial Relations to ensure compliance.
- HB 1181 HD2 **WC; Prescription Drugs; Reimbursement; Limitation** – Amends the reimbursement rate for repackaged, relabeled and compounded prescription drugs in the workers' compensation system to be __% of the average wholesale price. Restricts the provision of physician-dispensed prescription drugs to the first __ days following injury.
- SB 857 SD1 **WC Payment of Benefits; Presumptions; Resolution of Disputes** – Establishes that employers shall pay all workers' compensation claims for compensable injuries and shall not deny claims without reasonable cause or during a pending investigation. Creates a presumption of compensability for claims submitted by employees excluded from coverage under the Hawaii Prepaid Health Care Act. Establishes that employers shall notify providers of service of any billing disagreements and allows providers to charge an additional rate to employers who fail to adhere to the notice requirements. Establishes resolution procedures for employers and providers who have a reasonable disagreement over liability for services provided an injured worker. Requires an employee whose claim is found to be non-compensable to submit reimbursements for services rendered.
- SB 859 SD1 **Independent Medical Examinations; Chaperones; Recording Devices** – Allows an employee to have a chaperone present during the independent medical examination relating to a work injury under workers' compensation. Allows employee to record the examination upon approval of the examining physician or surgeon.
- SB 984 **WC; Advanced Practice Registered Nurses** – Amends the definition of "physician" in workers' compensation law to include advanced practice registered nurses.
- SB 1236 SD2 **WC Closed Claims Study** – Stipulates that the auditor will contract with a suitable entity to conduct of study of closed claims in the workers' compensation system that includes the study of processing time for closed claims. Extends the deadline for the study to 11/30/2018 and the deadline for the legislative report to twenty days prior to the regular session of 2019. Blank appropriation amount.

Healthcare and Insurance; Prescription Drugs

- HB 92 HD1
SB 308 SD1 **Long-Term Care Facilities; Medicaid; Cost Increase** – Provides for an annual inflationary adjustment in the methodology used to reimburse facilities for the long-term care of Medicaid recipients. Appropriates funds for the inflationary adjustment for fiscal years 2017-2018 and 2018-2019.
- HB 407 HD2 **High Deductible Health Plans; Health Savings Accounts** – Authorizes insurers, mutual benefit societies, and health maintenance organizations to offer, sell, or renew a high deductible health plan to employers subject to the prepaid health care act, provided that: (1) the insurer also sells the employer a prepaid health care plan group accident and health or sickness insurance policy that is not a high deductible health plan; (2) the insurer shall ensure that a prepaid health care group accident and health or sickness insurance policy that is not a high deductible health plan is offered to each eligible insured; and (3) the insurer shall ensure that a health saving account is also offered to each eligible insured. Clarifies that employers may not avoid providing a prepaid health care plan when required by law.
- HB 552 HD1 **ACA Preservation (House Version)** – Preserves certain mandates from the Affordable Care Act by codifying them under State law in the following manner:
- Preserves the individual mandate for taxpayers;
 - Requires all health insurance entities to include 10 essential health benefits, plus contraception and breastfeeding coverage benefits,
 - Extends dependent coverage for adult children until 26 years of age;
 - Prohibits health insurers from imposing a preexisting condition exclusion;
 - Prohibits health insurers from discriminating based on gender; and
 - Establishes a trust fund and procedures to reimburse insurers for un-recouped costs of providing minimal essential insurance benefits.
- SB 403 SD2 **ACA Preservation (Senate Version)** – Preserves certain mandates from the Affordable Care Act by codifying them under State law in the following manner:
- Preserves the individual mandate for taxpayers (but repeals on 6/30/2021);
 - Preserves the premium tax credit for individuals and families with low or moderate income;
 - Requires all health insurers to include 10 essential health care benefits, plus contraception and breastfeeding coverage benefits;
 - Extends dependent coverage for adult children until 26 years of age;
 - Prohibits health insurers from imposing a preexisting condition exclusion;
 - Prohibits health insurers from discriminating based on gender; and
 - Prohibits health insurers from discriminating with respect to participation against a health care provider acting within the scope of that provider's license or certification.
- SB 502 SD1 **In Vitro Fertilization; Coverage** – Removes discriminatory requirements for mandatory insurance coverage of in vitro fertilization procedures to create parity of coverage for same-sex couples, unmarried women, and male-female couples for whom male infertility is the relevant factor.

- SB 503 SD2 **Mental Health Coverage** – Requires health insurance coverage for case management services by licensed mental health providers for victims of sexual violence.
- SB 535 SD2 **Hearing Aids; Mandated Coverage** – Requires health insurance policies and contracts issued after 12/31/18 to provide coverage for the cost of hearing aids at a minimum of \$1,500 per hearing aid for each hearing-impaired ear every 36 months.
- SB 823 SD2 **Naturopathic Physicians; Coverage** – Requires insurers, mutual benefit societies, fraternal benefit societies, and health maintenance organizations to provide coverage for health care services provided by a naturopathic physician. Requires Insurance Commissioner to receive and investigate complaints regarding discrimination with respect to participation under a health insurance plan against any health care provider.

Medical Marijuana

- SB 174 SD2 **Medical Marijuana; Debilitating Condition** – Amends the definition of debilitating medical condition to include lupus, epilepsy, multiple sclerosis, arthritis, and autism, as conditions that qualify for the legal use of medical marijuana.

Contractors

- SB 865 SD1 **Electrical Work** – Requires any person applying for a license as an electrical contractor or electronic systems contractor to possess a trade license or an electrical engineering degree from an accredited college to perform electrical work in the State. Exempts public utilities and community antennae television companies.

Public Works Contracts

- HB 573 HD1
SB 1070 SD2 **Bid Shopping; Bid Peddling** – Prohibits bid shopping and bid peddling for the competitive sealed bidding process. HB 573 HD1 prohibits bidder from listing more than one subcontractor for each scope of work unless subcontractors vary with bid alternates and allows for substitution of a listed contractor in certain situations. SB 1070 SD2 gives bidders two hours after bid closing to clarify and correct subcontractor information.
- HB 1229 HD1 **Subcontractor Listing** – Requires public procurement construction bids to list subcontractors and joint contractors only for contracts with a total value of more than \$_____; provided that bids lacking this list may be accepted if in the State's best interest.
- HB 1322 HD2 **Procurement Contracts** – Requires the State Procurement Office, in conjunction with DOE, UH, DOT, and DAGS, 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.
- HB 1382 HD1 **Procurement; Small Business Assistance Initiative** – Assists small business in the state procurement process by establishing a temporary small business assistance initiative, small business advisory council, small business office, and small business procurement coordinator position within the state procurement office. Appropriates funds.

SB 1059 SD1 **Small Business Assistance Initiative; Procurement Initiative** – Establishes and defines a three-year small business assistance initiative and its parts within the state procurement office to develop an effective small business state contracting program. Establishes a small business assistance coordinator position, small business office, and small business advisory group as part of the initiative. Appropriates funds for the administration and operation of the initiative. Repeals the initiative on June 30, 2020.

Public Employees

HB 232 HD2 **Collective Bargaining; Prohibited Practices** – Clarifies the allowable scope of collective bargaining negotiations regarding the rights and obligations of a public employer.
SB 410 SD1

HB 1402 HD2 **Shared Leave Programs** – HB 1402 HD2 establishes a shared leave program within the Department of Human Resources Development that shall allow state employees to donate accumulated sick leave and vacation to a shared leave bank or directly to another employee. SB 207 SD2 provides that each state government branch shall establish a leave sharing program to allow state employees to donate accumulated vacation leave credits to another state employee who has a serious personal illness or injury or who has a family member with a serious personal illness or injury.
SB 207 SD2

Government Agencies

HB 594 HD1 **Workforce Development; Maritime Industry Grant Program** – Establishes within the Department of Business, Economic Development and Tourism (“DBEDT”) the Maritime Industry Grant Program to enhance maritime productivity and workforce development.

HB 597 HD1 **DBEDT; Broadband Coordinator** – Establishes within DBEDT a broadband coordinator to create the state broadband plan. Requires report to the legislature.

HB 627 HD2 **Public-Private Partnerships** – Establishes and funds a State Public-Private Partnership Coordinator position within the Department of Business, Economic Development and Tourism to manage public-private partnerships entered into by the State and associated contracts, proposals, and negotiations. Public-private partnerships entered into by Hawaii public housing authority are exempted from this Act.

HB 1031 HD1 **Criminal History Record Checks; CSEA, DOT, DHS and DLIR** – Adds the Child Support Enforcement Agency and the Departments of Taxation, Human Services, and Labor and Industrial Relations to the list of agencies that are authorized to conduct criminal history record checks on employees, applicants and contractors that have access to federal tax information. SB897 SD2 specifies that counties are authorized to conduct criminal history record checks of current employees, applicants, and contractors who have access to federal tax information.
SB 897 SD2

HB 1115 HD1 **HLRB; Electronic Notices** – Allows the HLRB to send notices of hearing electronically; requires the party seeking judicial review to bear the cost of preparing a transcript, except as provided by law, in which case the Board shall bear the cost of preparing the transcript.
SB 981 SD1

HB 1208 HD2 **DLIR; Appropriations** – Appropriates funds for ___ full-time equivalent enforcement specialist IV positions to be primarily responsible for the enforcement of Hawaii’s workers’ compensation, temporary disability insurance, and prepaid health care laws.

SB 619 SD1 **Workforce Development** – Requests the Department of Education (“DOE”), in collaboration and consultation with DBEDT; DLIR; and the University of Hawaii, to develop a K-12 curriculum to career pipeline initiative that will ensure the State's public school students are adequately trained and prepared to enter the State's workforce upon graduation from high school.

SB 1306 SD1 **DBEDT; Public Private Partnership** – Establishes an office of public-private partnership within DBEDT. Requires that the office create a strategic plan; create collaboration amongst state agencies to identify and implement public-private projects; and oversee and implement the public-private projects. Makes an appropriation.

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

SB 620 SD2 **Businesses Without Physical Presence in the State** – Amends the definition of “business” by clarifying that a person with no physical presence in the state is engaged in “business” in the State if the person has gross receipts attributable to this State of \$100,000 or more.

SB 1183 SD2 **GET; Counties** – Repeals the requirement that 10% of revenues from the county surcharge on state tax be withheld to reimburse the State for administrative costs. Sunsets if an ordinance that allows the capital costs of a rapid transportation system to be paid from county funds is not enacted before December 31, 2017. Requires the mayor of the county to submit certain plans with respect to the rapid transportation system.

Miscellaneous

HB 164 HD1
SB 314 SD1 **Arbitrators; Conflict of Interest** – Clarifies laws regarding an arbitrator’s failure to disclose certain facts prior to or during an arbitration. Provides that arbitrator must disclose a direct and material financial or personal interest in the outcome of the arbitration or an existing or past substantial relationship with any of the parties. Also allows court to vacate arbitration award upon failure of arbitrator to disclose conflict of interest.

HB 415 HD1 **Sexual Abuse of a Minor; Statute of Limitations** – Extends the period during which a victim of child sexual abuse may bring an otherwise time-barred civil action against the victim's abuser or an entity with a duty of care.

HB 420 HD2 **Disabled Veterans; Driver’s License**– Establishes the designation of "one hundred per cent disabled veteran" on drivers' licenses, instruction permits, and civil identification cards.

HB 917 HD1 **Mutual Benefit Societies; Minimum Net Worth Requirements** – Clarifies that a mutual benefit society shall maintain a minimum net worth calculated based on annual net premium revenues and net health care expenditures.

HB 1027 HD1 **Nonprofit Corporations** – Amends HRS Chapter 414D to impose a duty of loyalty on directors and officers of nonprofit corporations, to recodify provisions that would allow nonprofit corporations to convert into and out of domestic nonprofit corporations, and to increase the length of time that the Attorney General has to review proposed dissolutions of public benefit corporations. SB 893 SD1 include prohibition against directors from voting on matters where they have a conflict of interest,

HB 1130 HD1
SB 996 SD2 **Lie Detector; Psychological Tests; Correction Agencies** – Creates a new exception for correction agencies with regards to prohibitions against the use of lie detector tests and psychological tests in the employment context.

- HB 1281 HD1 **Work for a Day Pilot Program; Homeless** – Establishes a three-year Work-for-a-Day Pilot Program that provides homeless individuals with work opportunities and connects them with service providers. Appropriates funds.
- HB 1489 HD1 **Discrimination Prohibited; State Agencies, Programs or Activities Receiving Funds** – Prohibits a state agency or program or activity receiving state financial assistance from excluding from participation, denying benefits to, or discriminating against a qualified individual by reason of disability, sex, including gender identity or expression, or sexual orientation.
- SB 98 SD1 **District Court; Jurisdictional Limits** – Raises the district court’s jurisdictional limit for civil actions involving specific performance from \$20,000 to \$40,000.
- SB 798 SD1 **Telecommuting Task Force** – Establishes a temporary telecommuting task force to develop incentives and recommendations to encourage and expand telecommuting opportunities in the public and private sectors. Provides that task force shall appoint chairperson.
- SB 1171 SD1 **Health Care Privacy; Medical Information** – Identifies the circumstances in which the State has a compelling interest in the use and disclosure of de-identified protected health information under the Health Care Privacy Harmonization Act to include medical or economic research, public safety, patient protection, and proper operation of medical and health care facilities.