

April 14, 2017

2017 - Employment Bills After Second Crossover

Employment Practices and Employee Rights

HB 4 SD1 **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.
- Prevents use of sick leave when employee is covered by workers’ compensation or TDI.
- 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.
- Also permits parties to a collective bargaining agreement (“CBA”) to waive the requirements under this bill. Provides that such requirements shall not apply to employees covered by a CBA until the termination, renewal, or amendment of the CBA.

HB 208 SD2 **Stop-Work Orders; Workers’ Compensation; Payment of Wages** – Part I authorizes the DLIR to issue a stop-work order against employers who do not provide workers’ compensation insurance for their employees as required by law. Provides that the DLIR may serve a notice upon employers to provide proof of workers’ compensation insurance within three business days, and that a stop-work order may be issued upon the employer’s failure to do so. Part II authorizes the DLIR to issue stop-work orders against employers upon a finding that an employer has violated Hawaii’s payment of wages law.

- HB 213 SD1 **Hawaii Family Leave Law; Sibling; Death of Family Member** – Expands the Hawaii family leave law to (1) include siblings as a family member for whom an employee can take leave and (2) add death of a family member as a reason for leave. Specifies notice and certification requirements.
- HB 347 SD2 **Independent Contractor Definition; Unemployment Insurance** – Codifies the 20-factor test for determining independent contractor status currently found in Section 12-5-2 of the Hawaii Administrative Rules Requires into statute. Requires the DLIR to consider the 20 factors when making a determination of whether an individual is an independent contractor or employee for purposes of Hawaii’s unemployment insurance law. Clarifies that the degree of importance of each factor may vary, depending on the occupation and the individual facts of each case. Requires DLIR to provide report to Legislature regarding guidelines developed by unemployment insurance coverage committee.
- HB 1114 SD2 **Increased HIOSH Penalties** – Increases the maximum fine amounts for Hawaii Occupational and Safety violations pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015, which requires state penalties to be “as effective” as OSHA penalties.
- SB 429 HD2 **Social Media Privacy** – Prohibits employers (and post-secondary schools) from requiring or coercing an employee or prospective employee (or student) to disclose login credentials or content from a protected personal online account; alter the settings of the account to make it more accessible to others; or to access the account in front of the employer (or school). Provides exceptions for certain situations, such as accessing information that is publicly available; complying with federal or state law, court order, or rule of a self-regulatory organization; requiring or requesting access, upon knowledge of specific facts about the account, for purposes of investigating misconduct, protecting against threats to safety, and disclosure of proprietary and confidential information. Contains obligations and restrictions with regards to login information that is obtained by an employer’s lawful monitoring technology. Authorizes civil actions to be filed by the Attorney General or individual.

Workers’ Compensation (“WC”)

- SB 859 HD1 **Independent Medical Examinations; Chaperones; Recording Devices** – Allows an employee to (1) bring a chaperone to a WC independent medical examination and (2) record the examination, at the employee’s expense, upon approval of the examining physician or surgeon.
- SB 984 HD1 **WC Physicians; Advanced Practice Registered Nurses** – Amends the definition of "physician" in workers' compensation law to include advanced practice registered nurses.

Healthcare and Insurance

- HB 407 SD1 **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, mutual benefit society and health maintenance organization 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 plan in conjunction with a health savings account is approved as a 7(b) plan under the prepaid health care act; (3) the high deductible plan may not be offered without a health savings account; (4) the employer contributes ___% per pay period; and (5) the insurer, mutual benefit society, and health maintenance organization files a report with the Insurance Commissioner with the educational information and marketing materials for such plans. Clarifies that insurers, mutual benefit societies

and health maintenance organizations must also sell the employer a prepaid health care plan that is not a high deductible health plan.

- HB 552 SD2 **ACA Preservation** – 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 502 HD1 **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.

Medical Marijuana

- HB 1488 SD1 **Medical Marijuana; Debilitating Condition** – Amends the definition of debilitating medical condition to include lupus, epilepsy, multiple sclerosis, and arthritis as conditions that qualify for the legal use of medical marijuana. HB 1488 SD1 also includes autism as an additional condition.
- SB 174 HD2

Contractors

- SB 865 HD1 **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 SD2 **Bid Shopping; Bid Peddling** – Prohibits bid shopping and bid peddling for the competitive sealed bidding process. Also 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.
- HB 1229 SD1 **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 SD1 **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 SD1 **Procurement; Small Business Assistance Initiative** – Assists small business in the state procurement process by establishing a temporary small business assistance initiative, small business advisory group, small business office, and small business procurement coordinator position within the state procurement office. Appropriates funds. Sunsets on 6/30/2020.

Government Agencies

HB 627 SD2 **Public-Private Partnerships; Aloha Stadium** – Establishes an Office of Public-Private Partnership within DBEDT to manage public-private partnerships entered into by the State and associated contracts, proposals, and negotiations. Requires the office to create a strategic plan; create collaboration amongst state agencies to assist, identify, propose, plan, develop, and implement public-private projects; and oversee and implement the public-private projects. Appropriates funds, part of which shall be used to initiate Aloha Stadium redevelopment.

HB 1031 SD1 **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.

HB 1115 SD1 **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.

General Excise Tax (“GET”)

SB 1183 HD2 **GET; Rail Tax; Counties** – Reduces the amount deducted from the county surcharge on state tax to reimburse the State for administrative costs from 10% to 1% and extends authorization of the county surcharge on state tax to 12/31/2029; provided that certain conditions are met by the counties. Prohibits disbursement of surcharge revenues after December 31, 2017, to a county that prohibits the use of county funds for capital costs of a locally preferred alternative for a mass transit project or uses county surcharge revenue for purposes other than those capital costs.

Miscellaneous

HB 1027 SD2 **Nonprofit Corporations** – Amends Hawaii law regarding nonprofit corporations to restore procedures that allow nonprofit corporations to convert into and out of domestic nonprofit corporations; impose a duty of loyalty on directors and officers of nonprofit corporations; and increase the length of time the attorney general has to review proposed dissolutions of public benefit corporations from 20 days to 20 business days.

SB 1171 HD1 **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 to include quality assessment, patient protection and safety, improving health or reducing health care costs, fraud and abuse detection and compliance, and employment actions.