2016 - Employment Bills After First Crossover

Employment Practices and Employment Rights

HB 1683 HD1  **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 HD2  **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;
- Access the individual’s social media account in the presence of the employer; or
- Add any individual, including the employer, to their list of contacts associated with a personal social media account.

Provides exceptions where an employer:
- Accesses information that is publicly available;
- Complies with applicable laws, rules or regulations;
- Conducts an investigation of employee misconduct;
- Requires the employee to provide access to an employer-issued device or account or service provided by the employer;
- Conducts an investigation or requires 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
- Requests an employee to divulge personal social media reasonably believed to be relevant to an investigation of allegations of employee misconduct or violation of applicable laws and regulations.

Clarifies that an employer may prohibit an employee from using a personal social media account during employment hours, while on employer time, for business purposes. 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. Prohibits an employer from discriminating against an individual who refuses to disclose any information regarding a personal social media account as mentioned above.

HB 1909 HD1  **Equal Pay; Pay Transparency; Job Screening** – Amends Hawaii equal pay law to provide that employers shall not discriminate by paying different wages to employees of the opposite sex that perform “substantially similar work” (instead of “equal work”). Both measures add additional requirements for seniority systems or merit systems that result in wage differentials, and prohibit screening job applicants based on pay history or seeking pay history unless the employer first offers employment to the prospective employee and obtains written authorization.
HB 1909 HD1 also:
- Deletes current statutory language allowing pay differential based on quantity or quality of production or any other permissible factor other than sex; and
- Provides exceptions for factors other than sex if (1) there is no disparate impact or (2) where there is a disparate impact, the factor is job-related and there are no alternative business practices.

SB 2313 SD2 provides:
- A BFOQ defense must not have a disparate impact on sex and the qualification must be necessary to the position; and
- An exception where a bona fide factor other than sex, including education, training, or experience that is not based on a sex-based differential, is job related, and is consistent with a legitimate business necessity.

**Increased Unemployment Insurance Benefits** – Increases the maximum unemployment insurance benefit from 26 to 39 times the eligible individual’s weekly benefit amount. Requires that eligible employees laid off by Hawaiian Commercial and Sugar Company (“HC&S”) complete a training or retraining program to receive the maximum potential unemployment benefits. Specifies a separation date of March 7, 2016 or later as a condition of eligibility for the increased benefit period.

**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.

HB 2722 HD1 allows for additional benefits to be used by claimants to complete vocational training or retraining courses. SB 3038 SD2 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. Both measures also contain appropriation language.

**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.

**Unemployment Insurance; Independent Contractor Status** – Revises Hawaii’s unemployment insurance law for independent contractors in the following manner:
- Changes references to common law relationship of “master and servant” to “employer and employee;”
- Provides that an independent contractor is one who is “engaged” (as opposed to “customarily engaged”) in an independently established trade;
- Includes twenty factors from IRS to be used as guidelines when determining whether an individual could be an independent contractor;
- Retains the ability of the DLIR 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 2017 regarding guidelines developed by the unemployment insurance coverage committee; and
- Requires an annual report to the legislature regarding covered employment determinations.
SB 2961 SD2  
**Family Leave Trust Fund; HFLL Expansion; Designated Person** – Establishes a family leave insurance program, which shall be administered by the DLIR, including the processing of claims. Requires employees to make contributions into a family leave trust fund equal to the employee contribution rate for the temporary disability insurance fund. Provides that such funds are to be used to provide covered employees with up to twelve weeks of paid family leave, up to a maximum of 66 2/3% of the employee’s average weekly wages, per year. Revises HFLL in the following manner:

- Increases leave from 4 to 12 weeks;
- Covers employers with ___ or more employees (instead of 100 or more employees);
- Provides coverage for individuals who are unemployed if they have worked within the last twenty-six weeks and otherwise meet the requirements of the HFLL;
- Covers leave for new child through foster care;
- Expands definition of family member to include child or grandchild of a reciprocal beneficiary, child for whom a covered individual stands in loco parentis, siblings (biological, adopted or foster), spouse or reciprocal beneficiary of sibling, grandchild, grandparents, parent or grandparent of a reciprocal beneficiary, or a person who stood in loco parentis when the covered individual was a minor;
- Provides leave for qualifying exigencies due to military-related reasons; and
- Allows a covered employee to select a “designated person” for whom the employee may provide care if the person has a serious health condition and requires employer to notify the DLIR of such designation.

Also provides that an employer who provides paid family leave beyond what is required by this measure may require that such leave run concurrently with HFLL, but shall not require the leave to be applied against accrued sick or vacation hours. Prohibits duplication of family leave benefits with UI, TDI, or workers’ compensation benefits; provided, however, that a biological mother receiving TDI benefits for recovery from childbirth can simultaneously receive paid family leave. Adds that an employee shall not earn wages while on family leave. Blank appropriation amount.

SB 3036 SD1  
**Employment Discrimination** – Provides that an employer may refuse to hire or refer, or discharge an individual for reasons related to the ability of the individual to perform the work in question; provided that the employment policy is applied in a nondiscriminatory manner and unrelated to discriminatory practices, equal pay, criminal conviction records, or credit history.

**Wage and Hour**

HB 2010 HD1  
**Special Minimum Wage; First Jobs Training Programs** – Requires the director to approve first job training programs that employ first time hires for businesses with 25 or more employees that provide a program of job training and education. Provides that the first job training program shall last for at least six months but at most one year at which time graduates of the program may be offered full-time employment. Allows employers to pay an hourly rate of $8.00 per hour or $2.00 below the minimum wage, whichever is higher.

**Workers’ Compensation; Temporary Disability Insurance**

HB 2017 HD1  
**Workers’ Compensation Treatment Plans; Electronic Submissions** – Allows physicians to submit workers’ compensation treatment plans to employers by certified mail, facsimile, secure web portal, or secure electronic mail. Beginning January 2, 2021, requires employers to accept such electronic submission of treatment plans. Provides that a treatment plan shall be deemed accepted by the employer unless the employer submits an objection with in seven business days. 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 HD1  **Temporary Disability Insurance ("TDI") Exclusions; 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, limited liability company, limited liability partnership, 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) $___ or (2) $___ 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 HD2  **Workers’ Compensation Study** – Requires the DLIR to contract with an actuarial firm that has experience conducting workers’ compensation closed claims studies to perform a comprehensive review of workers’ compensation in the State of Hawaii. Appropriates funds and requires reimbursement.

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**Health and Insurance; Prescription Drugs**

HB 1757 HD1  **Pharmacy; Customized Patient Medication Packages** – Authorizes a pharmacy to provide a customized patient medication package to any patient of an institutional facility or any member of the general public, subject to certain conditions.

HB 1897 HD1, SB 2323 SD2  **STD Screening; Health Insurance** – Ensures insurance coverage for sexually transmitted disease screenings, including screenings for human immunodeficiency virus and acquired immunodeficiency syndrome. HB 1897 HD1 applies to policies, contracts and plans issued or renewed after January 1, 2018 and SB 2323 SD2 applies after January 1, 2017.

HB 2084 HD2, SB 2666 SD2  **Health Insurance Discrimination; Gender Identity** – Prohibits health insurers, mutual benefit societies, and health maintenance organizations 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 HD2  **Health Savings Account Programs** – Authorizes the establishment of health savings accounts in conjunction with group accident and health or sickness insurance policies, group hospital and medical service plan contracts, and health maintenance organization plans in the State.

HB 2740 HD1  **Health Insurance; Preauthorization** – Prohibits health insurance preauthorization requirements that cause undue delay in receipt of medical treatment or services. Specifies that insurers, but not health care providers, are liable for civil damages caused by undue delays for preauthorization.

SB 2181 SD2  **Terminally Ill Patients; Investigational Drugs** – Allows manufacturers of investigational drugs or biological products to make available such drugs or products to terminally ill patients under certain conditions.

SB 2319 SD1  **Contraceptives** – Requires insurers to cover contraceptive supplies dispensed in an amount sufficient to cover a twelve-month period.
SB 2320 SD1  **Pharmacists; Prescriptive Authority; Contraceptives** – Authorizes pharmacists to prescribe and dispense contraceptive supplies to persons under eighteen years of age or older. Specifies requirements pharmacists must meet prior to prescribing and dispensing contraceptives. Requires all insurers in the state and Medicaid managed care programs to reimburse pharmacists who prescribe and dispense contraceptives.

SB 2376 SD1  **Prescription Drugs; Non-Network Pharmacies** – Authorizes a beneficiary of a prescription drug benefit plan to obtain a prescription without penalty from a non-network retail community pharmacy located within ten miles of the beneficiary's residence, if the nearest network retail community pharmacy is located ten or more miles away. Requires reimbursement to non-network retail community pharmacist to include a $15 dispensing fee plus the product cost at the higher rate of reimbursement.

SB 2390 SD1  **Prescription Drugs; Customized Patient Medication Packages** – Authorizes a pharmacy to provide a customized patient medication package to any patient of an institutional facility or any member of the general public, subject to certain conditions.

SB 2395 SD1  **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. Ensures 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. Ensures reimbursement requirements for telehealth services apply to all health benefits plans under Hawaii Revised Statutes (“HRS”) Chapter 87A. Makes other conforming amendments related to telehealth.

SB 2396 SD2  **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.

SB 2667 SD1  **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 SD2  **Out-of-Network Providers; Surprise Bills; Dispute Resolution** – Specifies disclosure requirements for health care providers, health care facilities, and hospitals who are nonparticipating providers in a patient's health care plan. Specifies the amount a nonparticipating provider may bill for services performed without prior or subsequent authorization from a patient's health care plan. Specifies an insured shall not be liable to a health care provider for any sums owed by an insurer. Specifies that an insured who receives emergency services from a nonparticipating provider shall not incur greater out-of-pocket costs for the emergency services than the insured would have incurred with a participating provider.

SB 2672 SD1  **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.
Colorectal Cancer Screening and Awareness Program – Creates the colorectal cancer screening and awareness program within the Department of Health (“DOH”) and appropriates funds for the program. Blank appropriation amount.

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

HB 2478 ACA; Waiver by State – Authorizes the state to submit and implement a waiver from certain provisions of the ACA.

SB 2775

SB 2383 SD2 Hawaii Health Connector; Repeal – As part of the transition to a federally supported, state-based exchange: repeals the Hawaii health connector, updates an associated reference to the connector, and states that any debts and liabilities pertaining to the connector that were incurred prior to its repeal shall not constitute a debt or liability of the State.

SB 2894 SD2 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 Department of Labor and Industrial Relations (“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 1/1/2018.

Public Works Contracts

HB 2473 HD2 Public Works; Penalties – Changes the penalties for government contractors who violate wage and hour laws. HB 2473 HD2 increases the penalties to $1,000 for the first offense and $10,000 for the second offense. SB 2723 SD1 increases the penalties to $1,000 for the first offense and a penalty equal to the amount of back wages owed or $10,000, whichever is greater, for the second offense.

SB 2723 SD1

HB 2544 HD2 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 2724 SD2 Prevailing Wages – Expands the types of projects that must comply with wage and hour requirements under HRS Chapter 104, including construction projects on public lands regardless of whether the work is paid from public funds, and projects for which public lands are used as security for financing. Exempts certain projects from HRS Chapter 104. Establishes requirements that apply in situations involving private lessees of public land who contract for certain projects on public land. Appropriates funds.

SB 3092 SD2 Procurement Officers; Competitive Sealed Bidding; Subcontractors – Provides that a bidding contractor shall provide the name of each joint contractor or subcontractor and the nature or scope of that entity's work no later than two hours after the closing of bidding. Authorizes procurement officers to consider a previously licensed and listed subcontractor's license as valid; provided that certain conditions are satisfied.

Public Employees

HB 2353 HD2 Position Exemptions; Permanent Exempt Status – Restores the second civil-service exempt deputy director position for DHS. For a period of one-year, provides a civil service exemption for
various positions in the DHS, Department of Public Safety, DOH, DLIR, and the Department of Business, Economic Development, and Tourism.

**Government Agencies**

HB 2009 HD1  **DLIR; Hoisting Machine Operators** – Repeals the Hoisting Machine Operators’ Certification Revolving Fund and the position of the executive director. Tasks the DLIR with the responsibility of administrative duties for the Hoisting Machine Operators Advisory Board. Allows the Hoisting Machine Operators Advisory Board to establish fees for the issuance of permits or certificates by administrative rule.

HB 2161 HD1  **DLIR; Workers’ Compensation Hearing Officers** – Appropriates funds for the hiring of six hearing officer positions and support staff within the DLIR’s disability compensation division and to provide the officers and staff with legal and medical training. Provides the specific job positions for which funds shall be appropriated.

HB 2186 HD1  **Workforce Development; Dislocated Workers; Maui** – Directs and appropriates funds for the DLIR to provide workforce development, worker training and retraining, and other dislocated worker assistance programs for workers affected by the cessation of sugar production on Maui.

HB 2367 HD1  **Hawaii Labor Relations Board (“HLRB”); Service of Process** – Allows the HLRB the option of serving complaints and notices of hearings via first class mail and also allow service by electronic means. Clarifies that for hearings related to unfair labor practice charges, HLRB must give at least 15 days written notice.

SB 2896 SD1  **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. Contains blank appropriation amount but accompanying committee report recommends amount of $249,864.

HB 2472 HD1  **DLIR; Maritime Industry Grant Program** – Establishes a maritime industry grant program within the DLIR. Establishes criteria for the awarding of grants.

HB 2475 HD1  **Medicaid Buy-In Program for Workers with Disabilities** – Establishes within the DHS a Medicaid Buy-in Program for Workers with Disabilities.

SB 2895 SD1  **Hawaii Civil Rights Commission (“HCRC”); Investigation and Conciliation of Complaint** – Authorizes the HCRC 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. Authorizes the HCRC to reconsider the Executive Director’s decision to dismiss a compliant and to issue a notice of right to sue with respect to fair housing to comply with the federal Fair Housing Act.

SB 2898 SD1  **DLIR; DHS; ACA; Appropriation** – Makes an emergency appropriation of $1.65M for DLIR and $3.79M for DHS to cover short-term costs required to comply with the ACA for fiscal year 2015-2016.

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

HB 1870 HD2  **Disabled Individuals; Tax Credit** – Provides a taxpayer who hires an individual with a disability with a nonrefundable tax credit for the six-month period after the individual is initially hired by the taxpayer. Tax credit amount is an unspecified percentage of qualified wages.
HB 2486 HD3  **Kapolei Jobs Initiative; Tax Credit** – Establishes a Kapolei jobs initiative program that offers tax incentives to increase the number of businesses willing to establish or relocate themselves in the Kapolei region. Tax incentives are currently unspecified.

SB 2655 SD1  **GET Returns** – Amends the date of filing of monthly, quarterly, semiannual, and annual general excise tax returns from the 20th day of the respective applicable month to the last day of the month. Applies to returns and payments due on or after January 1, 2017.

**Miscellaneous**

HB 1044 HD1  **Sexual Assault; Supervisors** – Amends sexual assault in the fourth degree to include persons who abuse their position of trust, power, authority, or supervision of a person who is 16-17 years of age, provided that the person is not less than five years older than the minor and not legally married to the minor.

HB 1756 HD3  **Nursing; Criminal History Check** – Requires all applicants for nurse licensure, renewal, reactivation, or restoration to comply with state and federal criminal history record checks. Authorizes the Board of Nursing to develop and adopt rules to implement required criminal history record checks.

HB 2561 HD1  **Felony and Misdemeanor Theft; Increased Thresholds** – 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 HD1  **HC&S; 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. Both versions currently contain blank appropriation amount.

HB 2647 HD2  **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 of menial labor, such as landscape and ground beautification, trash collection and median clean up.

SB 2104 SD2  **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 2394  **Health Care Workers; Influenza Vaccination** – Requires health care workers to receive an annual influenza vaccination. Requires all hospitals in the state to notify health care workers of the influenza vaccination requirement, provide such workers with education about the benefits of the influenza vaccine, and provide or arrange for influenza vaccination at no cost. Provides exceptions under certain circumstances.

SB 2544 SD2  **Professional Employer Organizations; Fees** – Establishes a tiered scale for the biennial renewal fees for professional employer organizations, based on the number of covered employees a professional employer organization reports to the DLIR.

SB 2680 SD1  **Financial Institutions** – Clarifies HRS Chapter 412 relating to fees for financial institutions by clearing up inconsistencies. Repeals the credit union advisory board.